

90-523

No.

Supreme Court, U.S.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

BRYAN W. NICOLLE-WAGNER and
RACHELLE J. NICOLLE-WAGNER

Petitioners

versus

COUNTY OF HAWAII

Respondent

ON APPEAL TO THE HAWAII SUPREME COURT
PETITION FOR WRIT OF CERTIORARI

Rachelle J. Nicolle*
Bryan W. Nicolle-Wagner
800 North Haven, Suite 120
Ontario, California 91764
(714) 989-8584

*Counsel of Record

EDITOR'S NOTE

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QUESTIONS PRESENTED

1. Does the County of Hawaii's admitted policy of tampering with taxpayers' appeals before they reach the County Board of Review, violate the due process clause of the 14th Amendment to the United States Constitution.
2. Is there any evidence presented to support the Hawaii Supreme Court's finding that the County Board of Review made a determination on the 1985 and 1986 reassessed tax years petitioners appealed to the County of Hawaii Board of Review? If the County Board of Review failed to make a determination on the 1985 and 1986 reassessed tax years petitioners were appealing, does this violate due process under the 14th Amendment to the United States Constitution and give rise to a 42 U.S.C. Section 1983 claim?
3. Although the Hawaii Supreme Court did make a finding that the County's policy of tampering with taxpayer's appeal "for some reason" did not violate due process, it also affirmed the Tax Appeal Court's conclusion of law that this issue was moot. The Hawaii Courts have previously



ruled that mootness is a defense to a 42 U.S.C. Section 1983 claim for injunctive and declaratory relief. Is mootness an affirmative defense to a 42 U.S.C. Section 1983 civil rights claim brought in a state court? -

4. If petitioners prevail on their 42 U.S.C. Section 1983 claim, do they have a right to attorney fees under 42 U.S.C. Section 1988?

5. Is it a violation of due process for the County of Hawaii to charge reassessment penalties, and for the State Courts to deny petitioners the right to appeal those reassessment penalties?

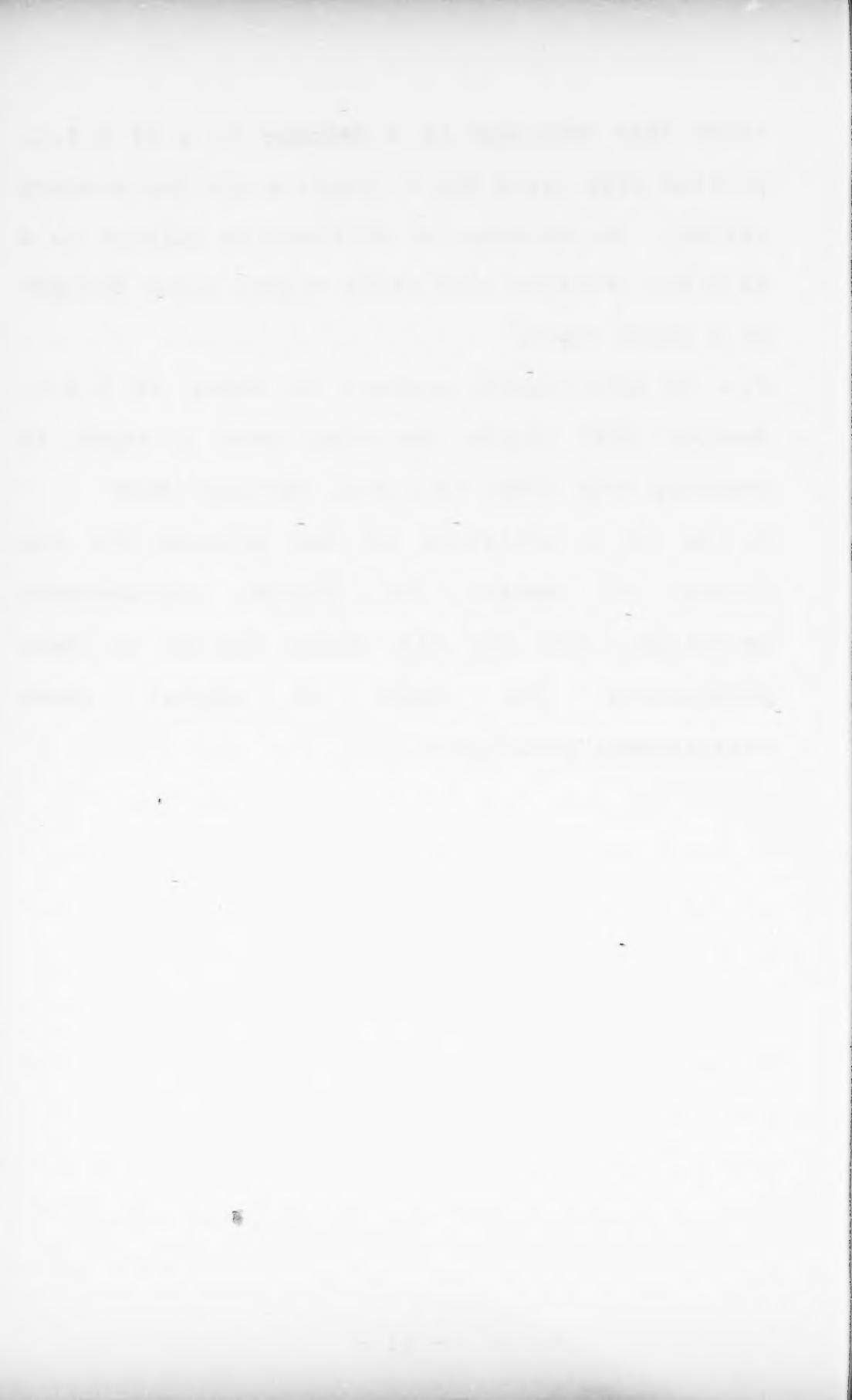


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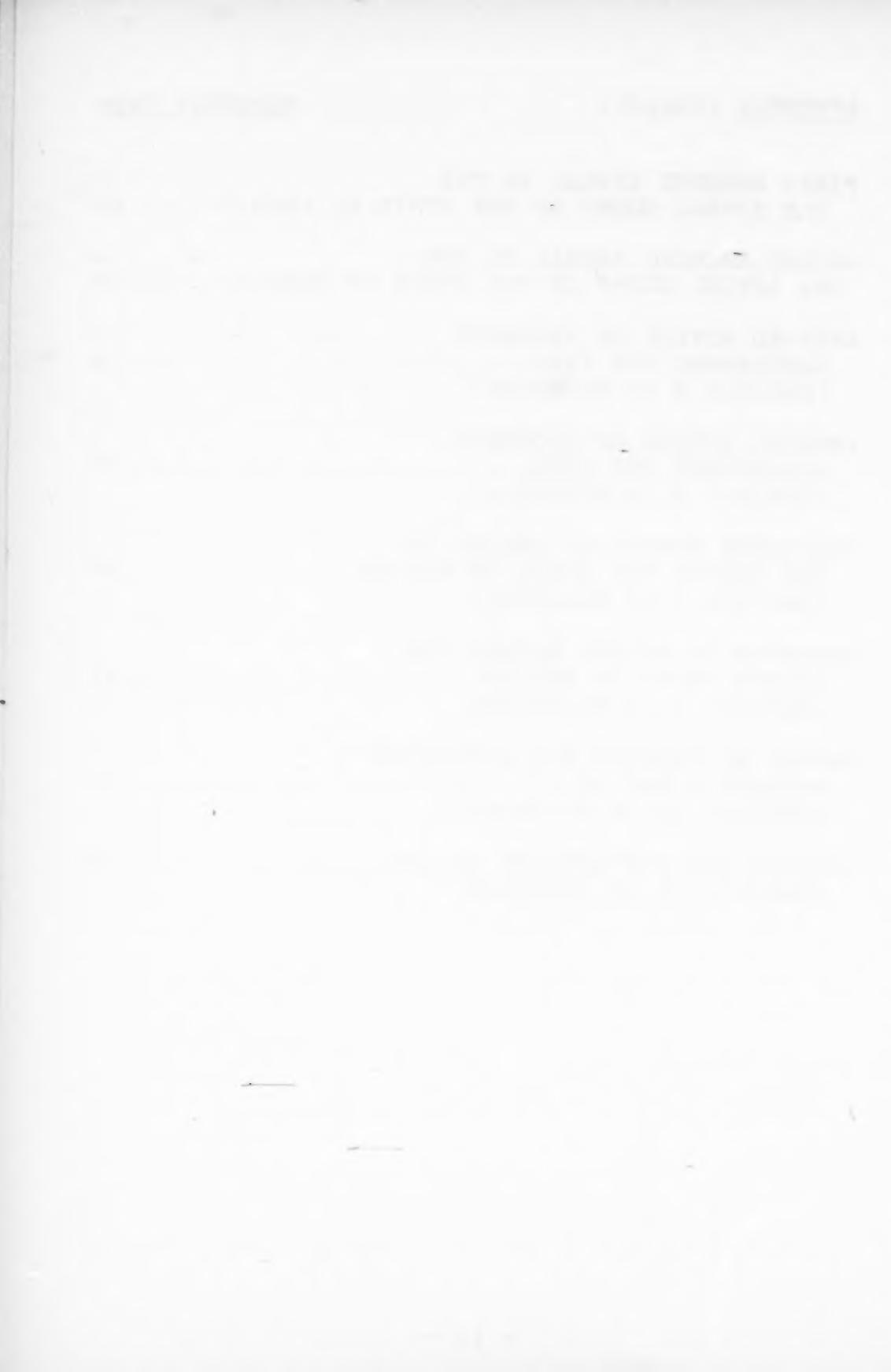
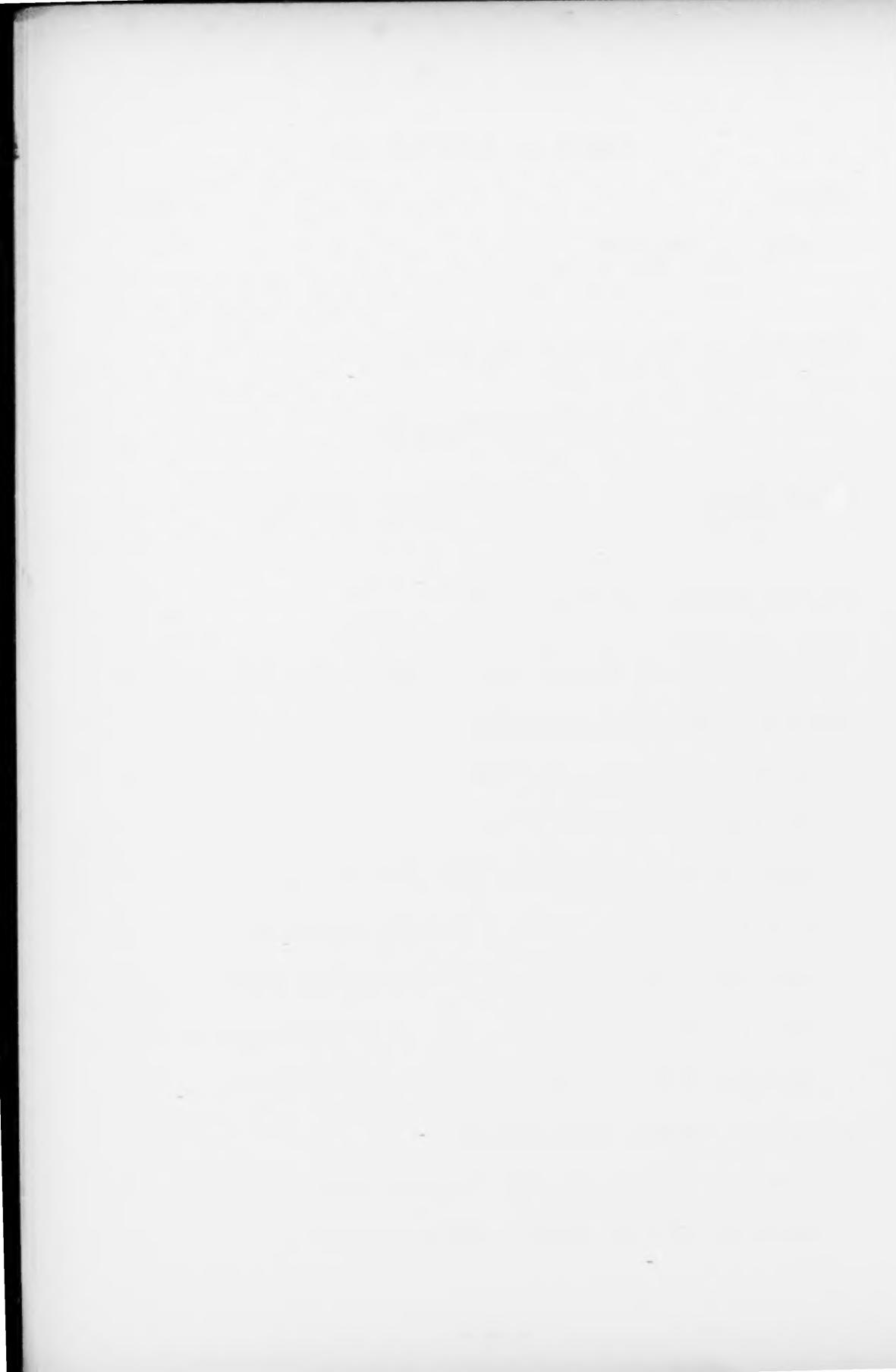


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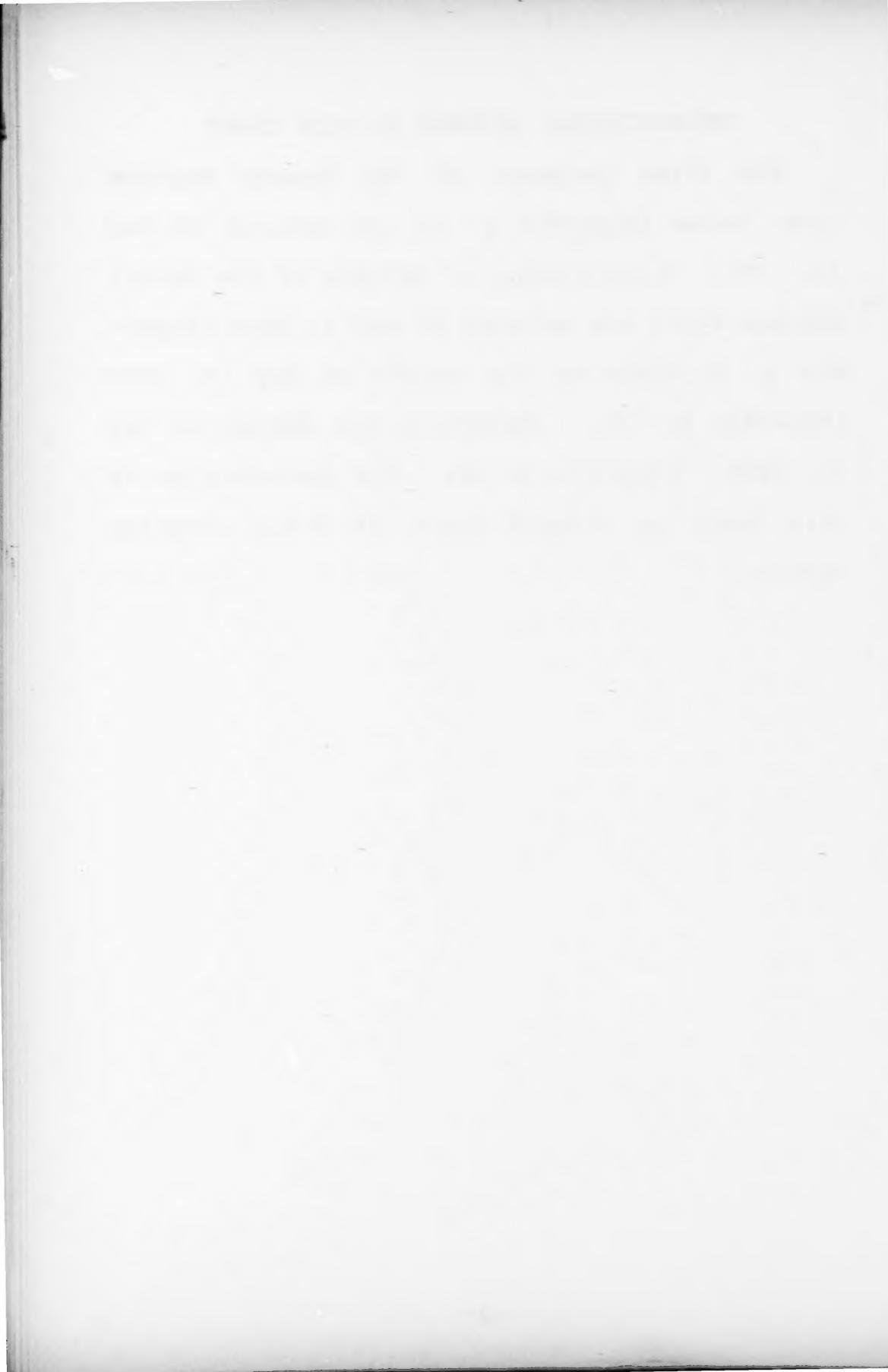


OPINIONS BELOW

The final order of the Hawaii Supreme Court was entered into on May 30, 1990, (Appendix p. 1). This order contains no opinion. The opinion of the Hawaii Supreme Court below (Appendix p. 3) was in an unpublished memorandum opinion. The Findings of Facts, Conclusions of Law and Order of the Hawaii Tax Appeal Court below (Appendix p. 8) was not reported. The opinion of the Hawaii County Tax Board of Review below (Appendix p. 14) was not reported.

JURISDICTIONAL GROUNDS IN THIS COURT

The final judgment of the Hawaii Supreme Court below (Appendix p. 1) was entered on May 30, 1990. A memorandum of opinion of the Hawaii Supreme Court was entered on May 3, 1990 (Appendix p. 3). Rehearing was sought on May 14, 1990 (Appendix p. 19). Rehearing was denied on May 21, 1990. (Appendix p. 16). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).



CONSTITUTIONAL PROVISIONS, STATUTES
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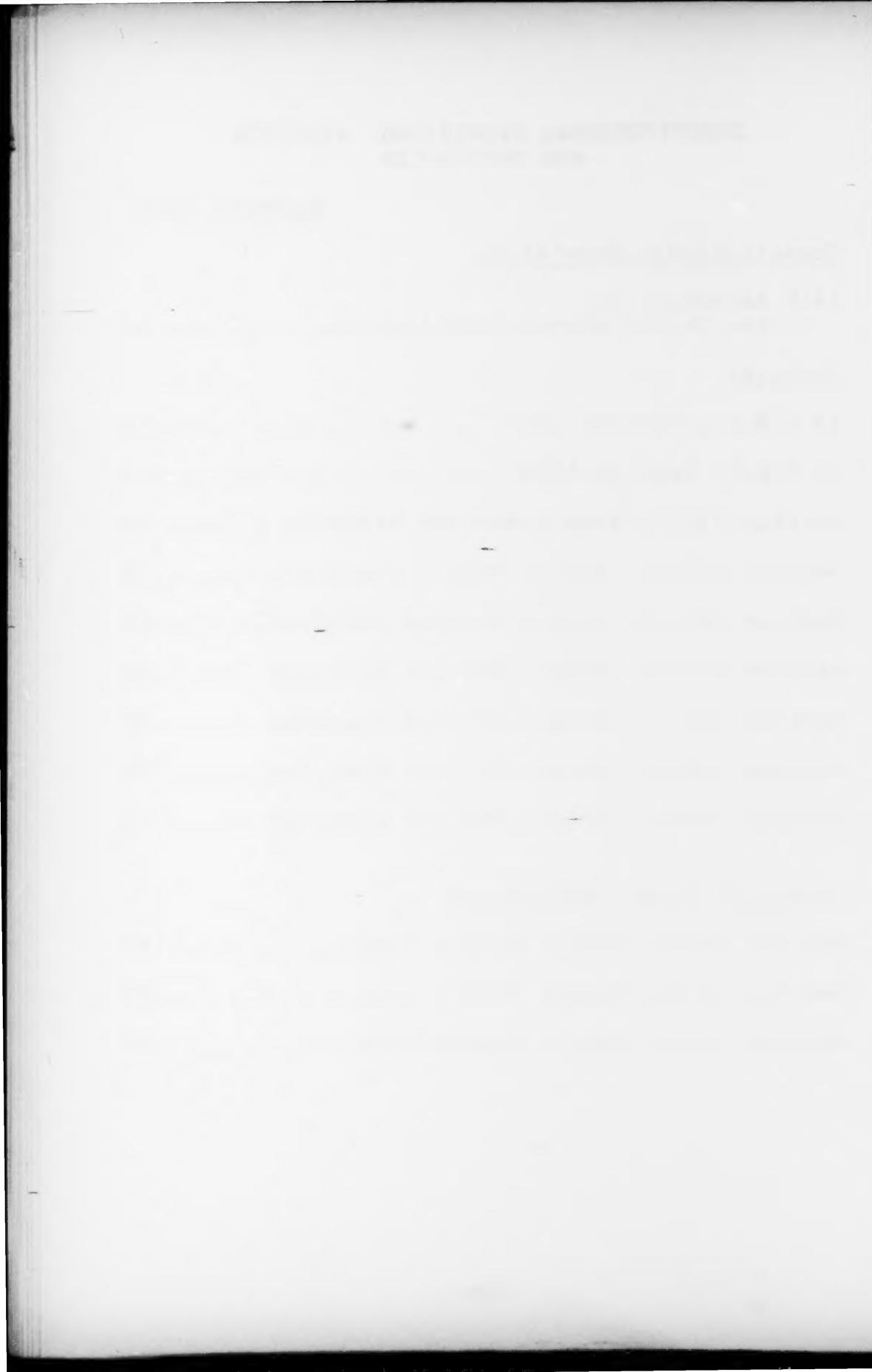
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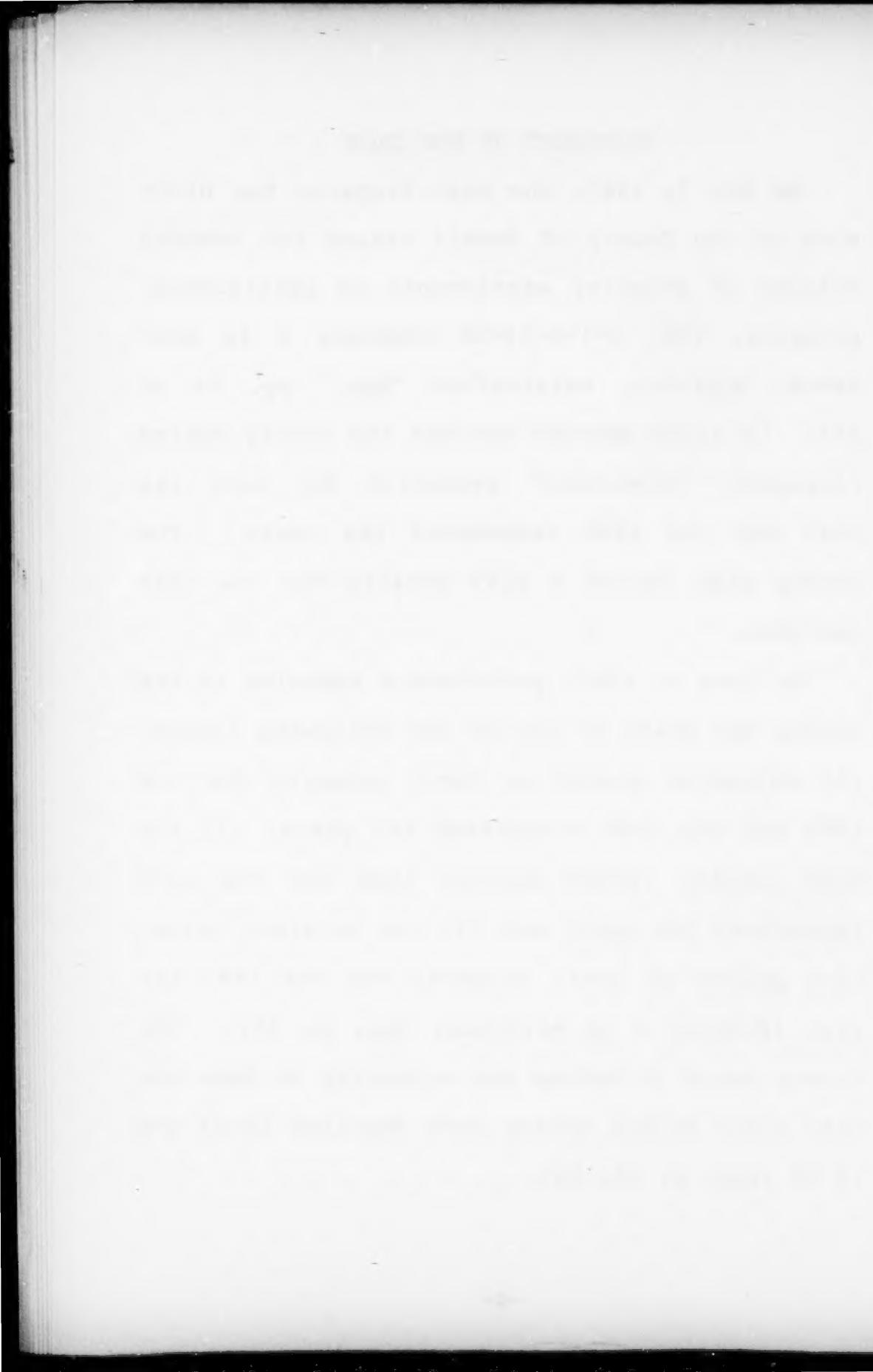
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STATEMENT OF THE CASE

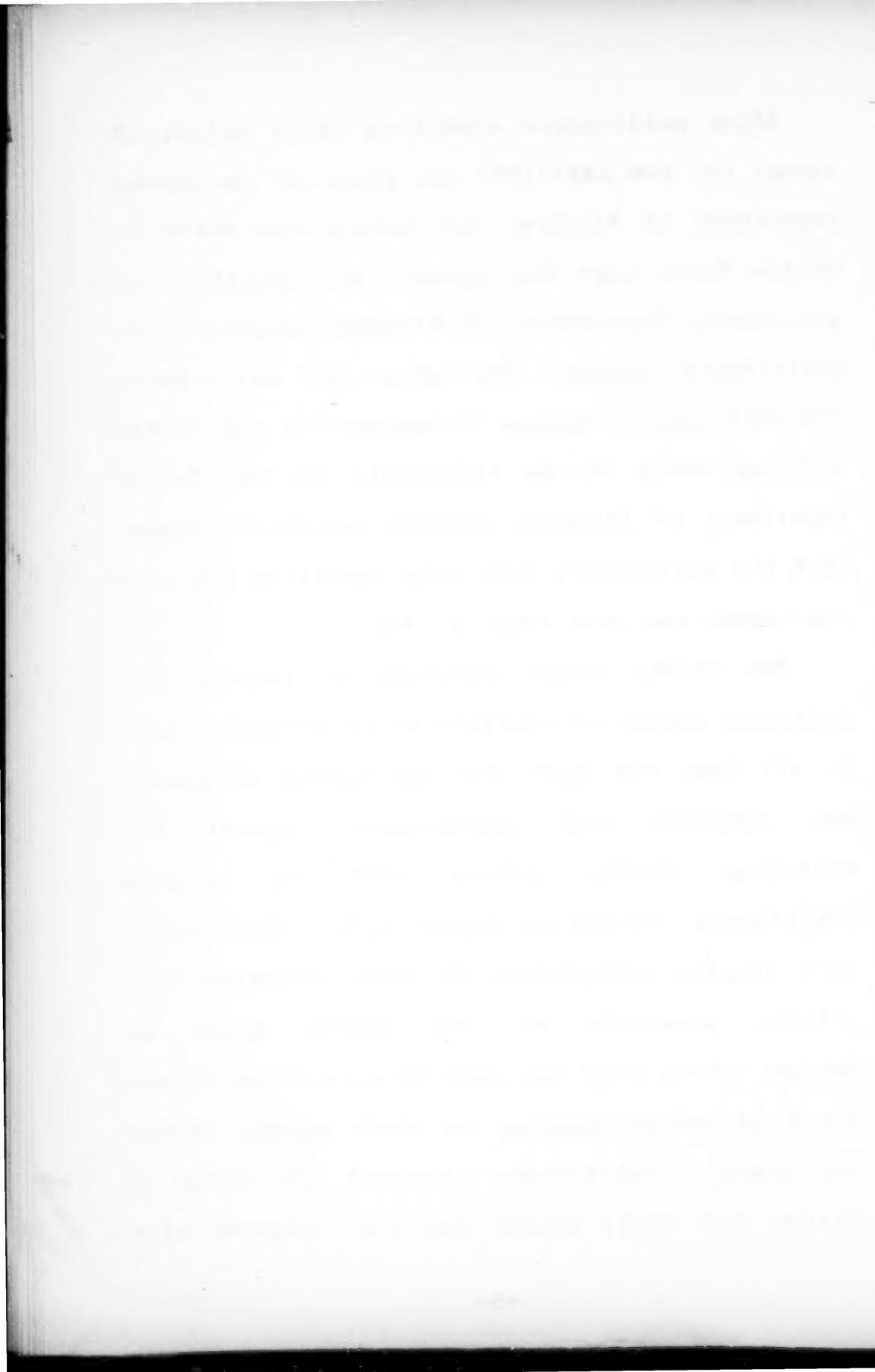
On May 7, 1987, the Real Property Tax Division of the County of Hawaii issued two amended notices of property assessments on petitioners' property, TMK: 3-1-4-32-40 (Exhibit 2 in Evidence, Appendix, hereinafter "App." pp. 34 to 39). In these amended notices the County denied taxpayers' homeowners' exemption for both the 1985 and the 1986 reassessed tax years. The County also levied a \$100 penalty for the 1985 tax year.

On June 2, 1987, petitioners appealed to the County Tax Board of Review the following issues: (1) valuation placed on their property for the 1985 and the 1986 reassessed tax years; (2) the \$100 penalty levied against them for the 1985 reassessed tax year; and (3) the original valuation placed on their property for the 1987 tax year (Exhibit 3 in evidence, App. p. 40). The County Board of Review had authority to hear the case under Hawaii County Code Sections 19-33 and 19-99 (App. p. 63, 60).



After petitioners submitted their notice of appeal for the 1985-1987 tax years to the County Department of Finance, but before the Board of Review could hear the appeal, an individual in the County Department of Finance tampered with petitioners' appeal. The number "87" was crossed off petitioners' notice of appeal for the "1985-87" tax years by an individual in the County Department of Finance, thereby making it appear that the petitioners were only appealing the 1985 reassessed tax year (App. p. 40).

The County later admitted in request for admission number 10 (Exhibit 12 in evidence, App. p. 47) that the agent for the County of Hawaii who tampered with petitioners' appeal was following County policy when he altered petitioners' notice of appeal form. Petitioners were relying exclusively on their tampered with written materials to the County Board of Review. They were not able to attend the County Board of Review hearing on their appeal before the Board. Petitioners informed the Board of Review that their appeal had been tampered with

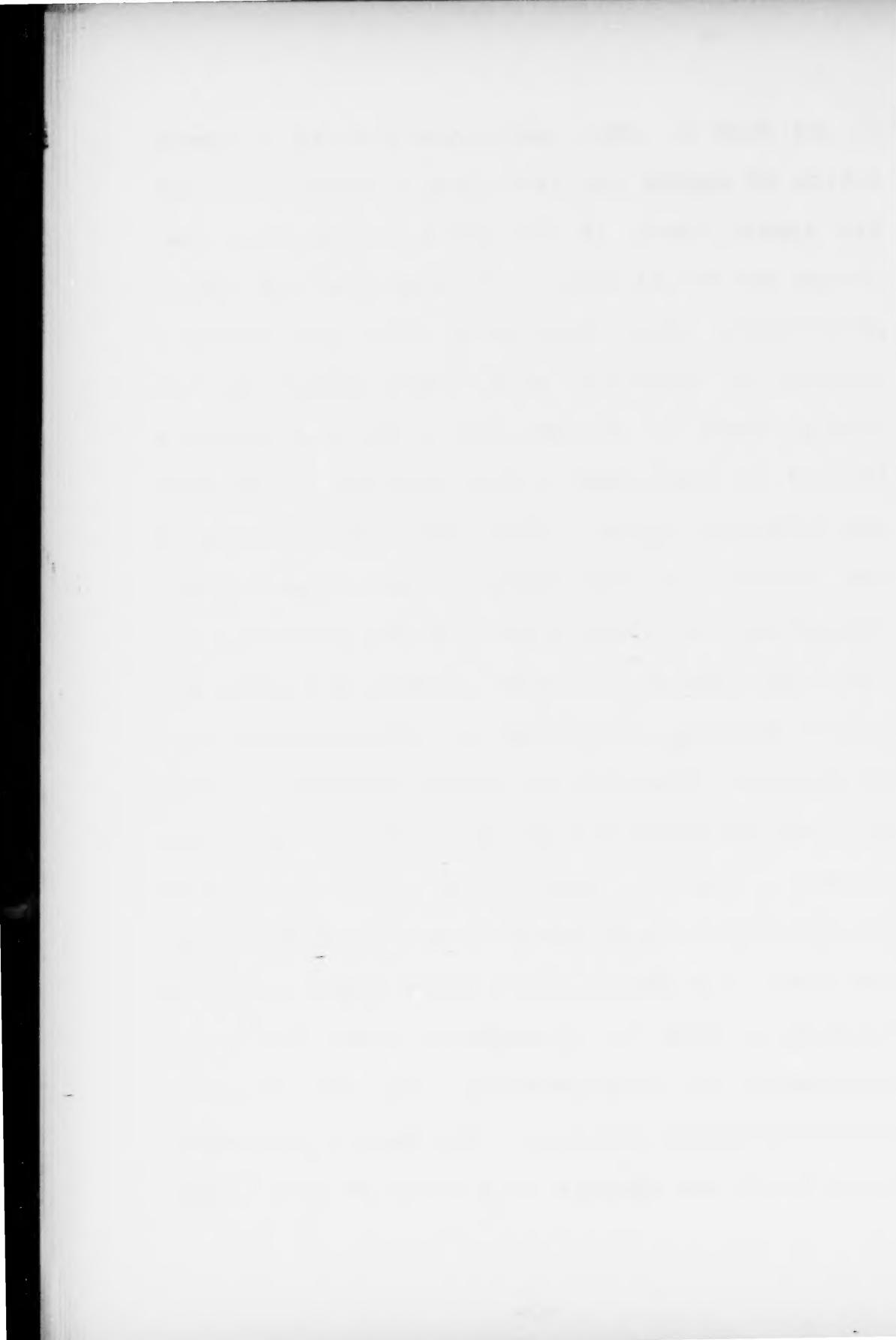


by an agent for the County and that this violated their due process rights (Exhibit 9 in evidence, App. p. 43). This is the first stage in the proceedings in which this federal question sought to be reviewed was raised.

Despite the fact that petitioners were appealing both the reassessments for the 1985 and the 1986 reassessed tax years, the \$100 penalty on the 1985 reassessed tax year, and the 1987 tax year original assessment, the County Board of Review only made a written determination for the 1987 tax year (Exhibit 17 in evidence, App. p. 14). There was no evidence introduced that the County Board of Review ever considered the appeal of the 1985 and 1986 reassessed tax years. The County admitted in its answer to paragraph 2 of petitioners' appeal before the Tax Appeal Court that "the Board refused [petitioners'] appeal (did not make a determination) on the appeal of the '86-'87 reassessment." The County of Hawaii Board of Review's own written determination clearly shows it only made a determination for the 1987 tax year (App. p. 14).

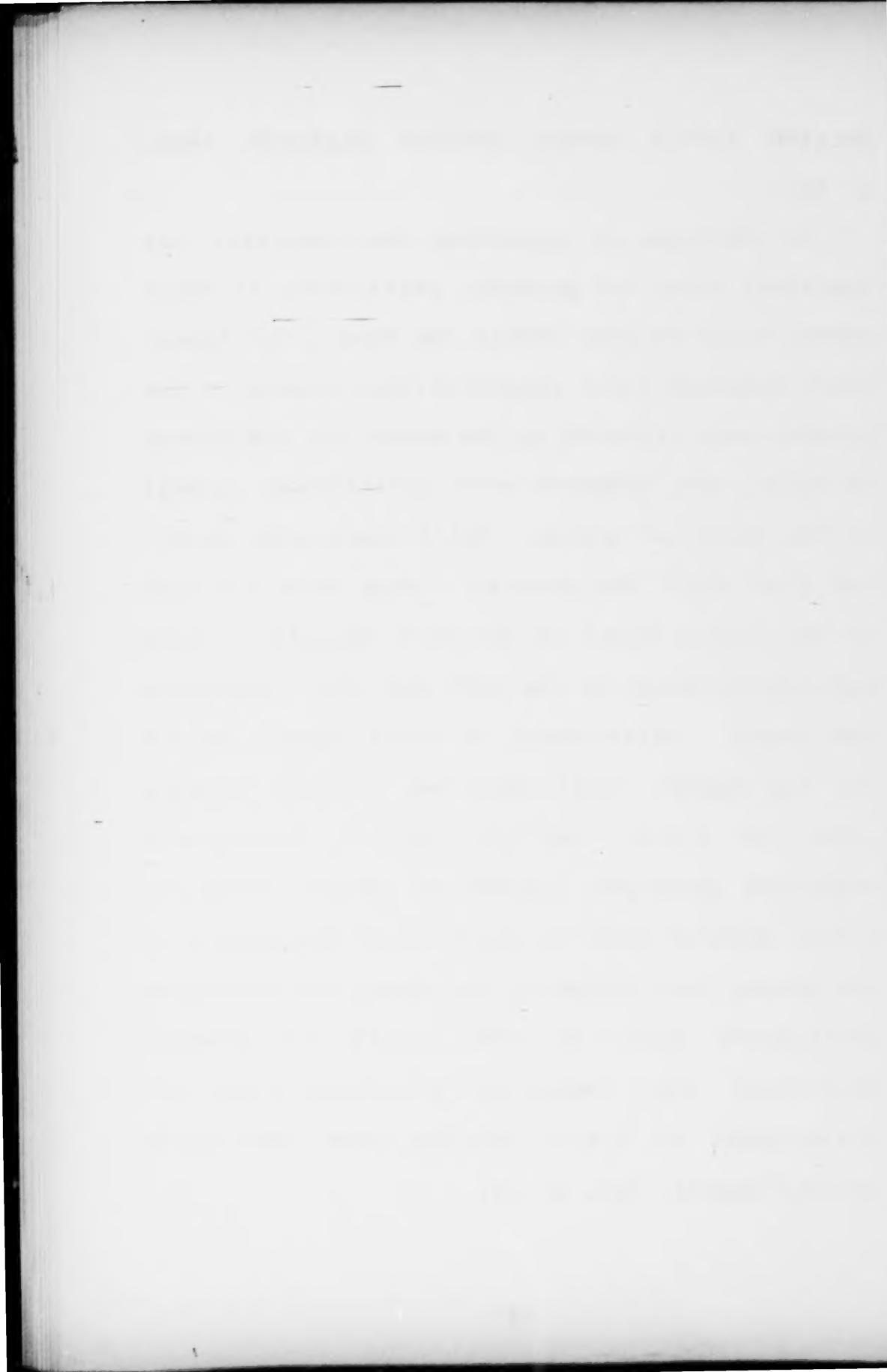


On June 2, 1987, petitioners filed a timely notice of appeal for the subject property to the Tax Appeal Court of the State of Hawaii. Although the actual amount of taxes owed was small, petitioners' were frustrated with the County's actions -in tampering with their appeal to the County Board of Review and with the County's failure to grant them a fair hearing on the 1985 and 1986 tax years. Thus petitioners appealed the matter to the Hawaii Tax Appeal Court requesting the property be assessed correctly and that the unconstitutional County policies and unfair hearing practices be straightened out. Petitioners objected to these unconstitutional policies as being violative of Petitioners' due process rights under the United States Constitution. Petitioners further requested that the Hawaii Tax Appeal Court grant them reasonable attorney's fees to recompense them for their assistance in straightening out the County's unconstitutional policies. The Hawaii Tax Appeal Court hears tax appeals in a trial de novo. See



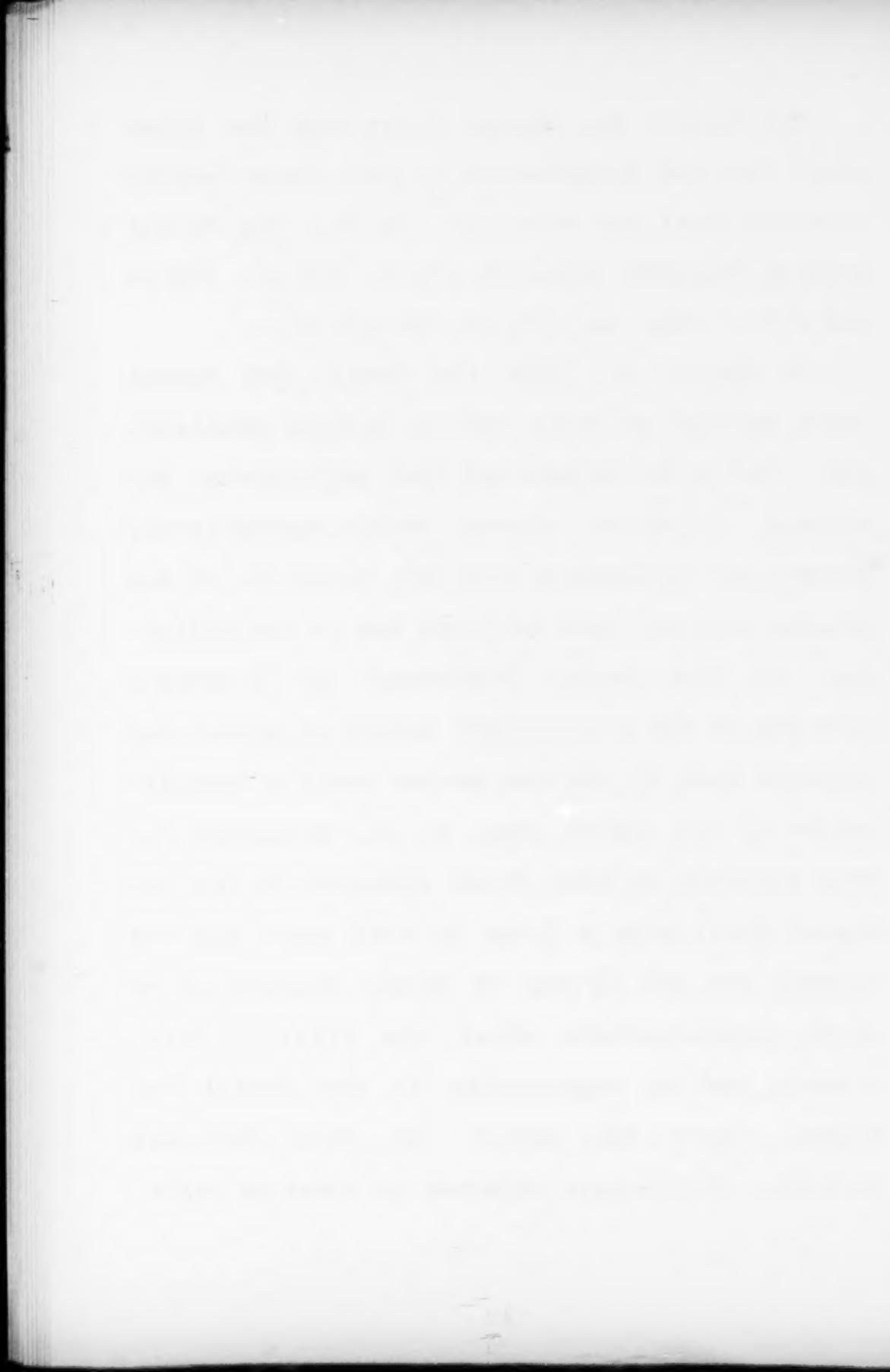
Section 232-13 Hawaii Revised Statutes (App. p. 56).

In addition to appealing the incorrect tax appraisal value and penalty, petitioners in their appeal/trial de novo before the Hawaii Tax Appeal Court asserted their constitutional rights to due process were violated by the agent for the County of Hawaii who tampered with petitioners' appeal to the Board of review. Petitioners also asserted that their due process rights were violated by the County Board of Review's failure to make any determination on the 1985 and 1986 reassessed tax years. Petitioners in their appeal before the Tax Appeal Court asserted a claim arising under 42 U.S.C. Section 1983. Petitioners requested positive injunctive relief under 42 U.S.C. Section 1983 in the form of the return of the excess real property tax money and penalties petitioners paid to the County of Hawaii. Petitioner also requested attorneys fees and costs under 42 U.S.C. Section 1988 (See First Amended Appeal, App. p. 25).



The Hawaii Tax Appeal Court was the first court that had jurisdiction to hear these federal constitutional and statutory claims. See Hawaii Revised Statutes Sections 232-3, 232-11, 232-13 and 232-17 (App. pp. 53, 54, 56 and 57).

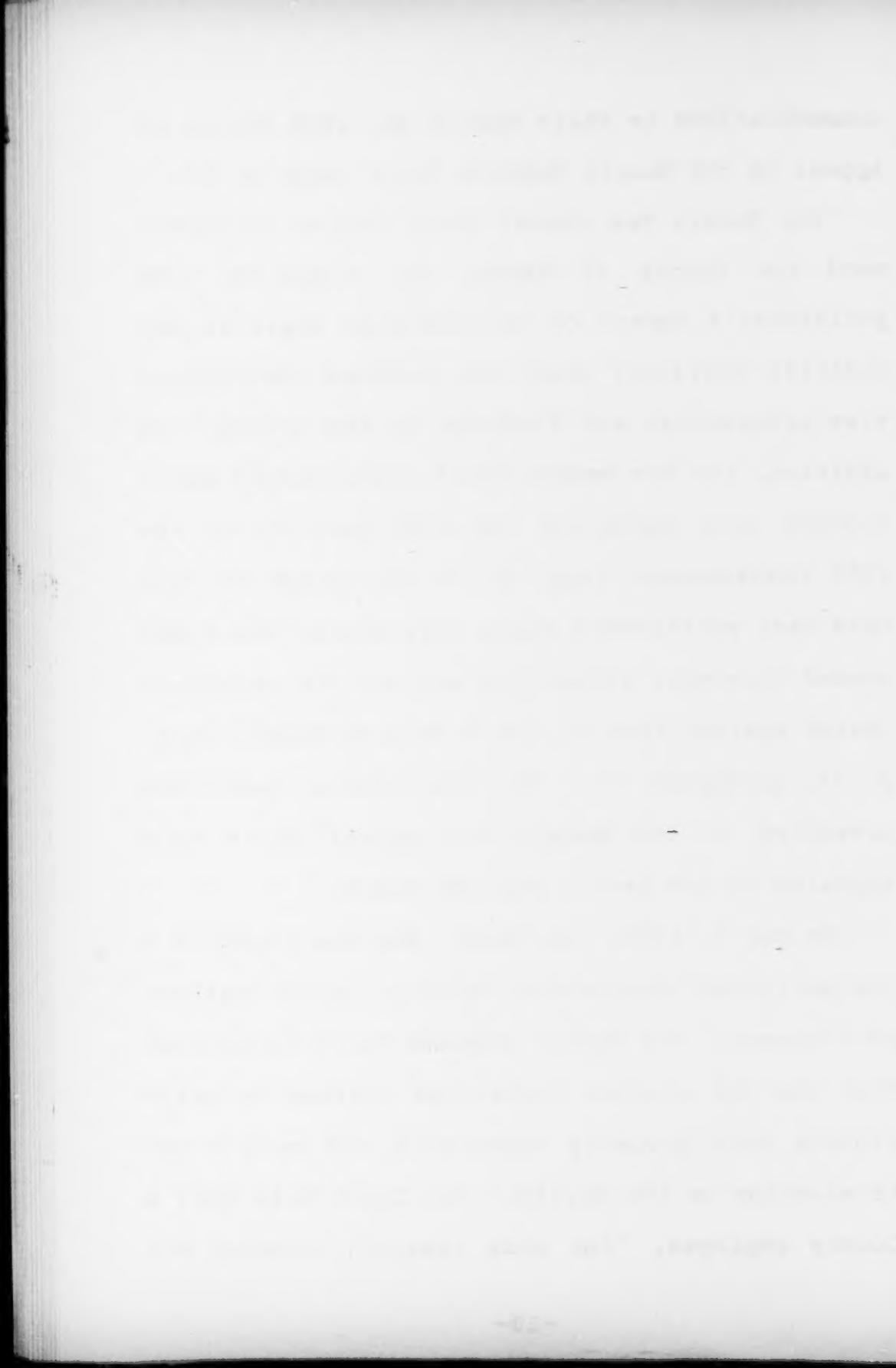
On August 11, 1989 the Hawaii Tax Appeal Court entered an order ruling against petitioners. That order recognized that petitioners' due process violation claims were appropriately brought but determined that any violation of due process that may have occurred due to the individual in the County Department of Finance's altering of the petitioners' notice of appeal was rendered moot by the Tax Review Board's consideration of the appeal (App. p. 11, paragraph 4). This mootness defense first appeared in the Tax Appeal Court when a judge in that court and the counsel for the County of Hawaii engaged in ex parte communications after the trial. Petitioners had no opportunity in the Hawaii Tax Appeal Court to object to this mootness defense. Petitioners objected to these ex parte



communications in their August 28, 1989 Notice of Appeal to the Hawaii Supreme Court (App. p. 17).

The Hawaii Tax Appeal Court failed to reprimand the County of Hawaii for tampering with petitioner's appeal or to otherwise exercise any judicial oversight over the muddled administrative proceedings and findings by the County. In addition, the Tax Appeal Court acknowledged petitioners were appealing the \$100 penalty in the 1985 reassessment (App. p. 9, paragraph 4), but held that petitioners could only appeal the reassessed homeowner exemptions and not the penalties levied against them by the County of Hawaii (App. p. 12, paragraph 5). All the federal questions presented to the Hawaii Tax Appeal Court were appealed to the Hawaii Supreme Court.

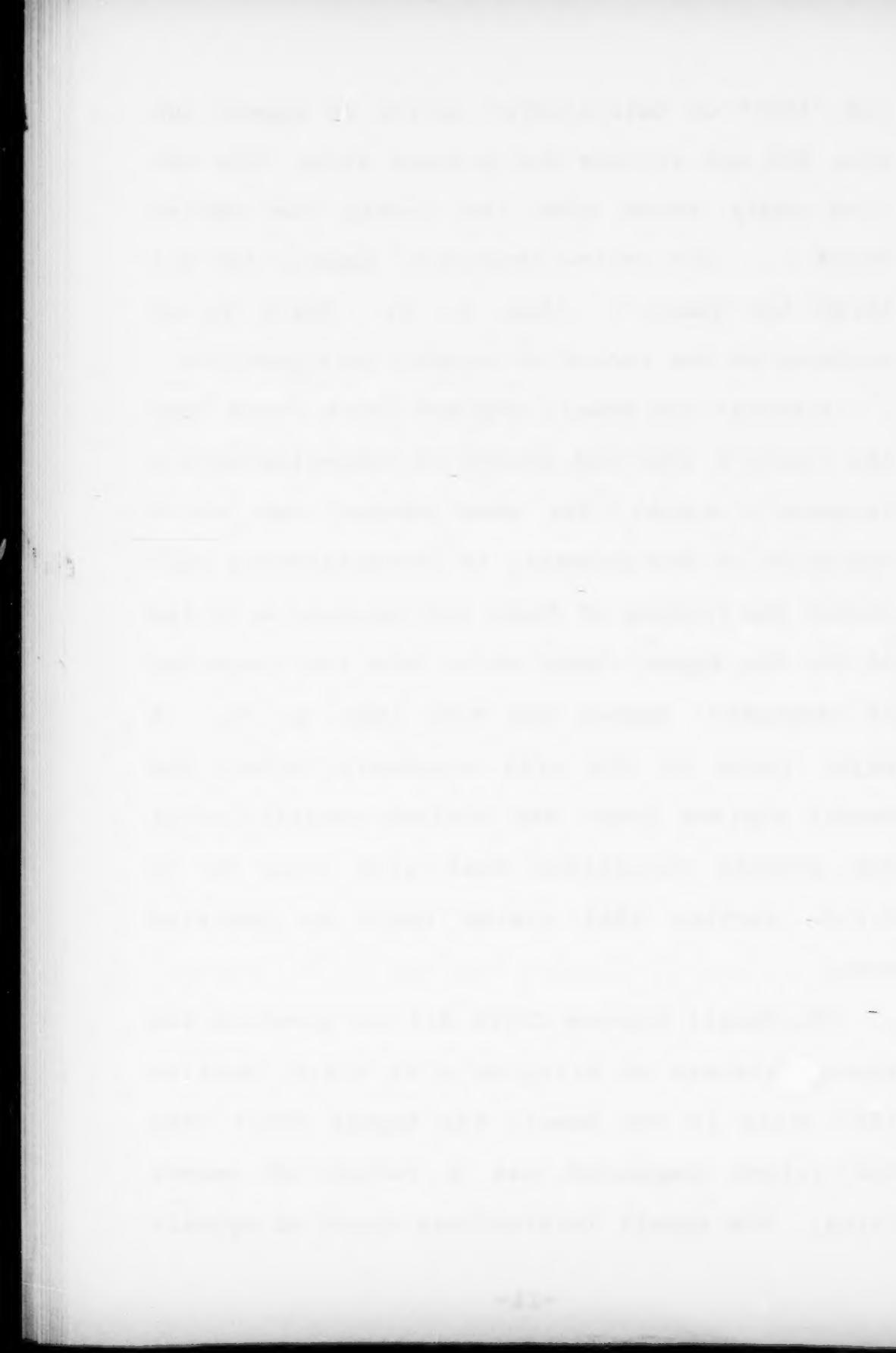
On May 3, 1990, the Hawaii Supreme Court in a non-published memorandum opinion ruled against petitioners. The Hawaii Supreme Court recognized that the due process violations claimed by petitioners were properly appealable and made a determination on the merits. The Court held that a County employee, "for some reason", crossed out



the "1987" on petitioners' notice of appeal but this did not violate due process since "the record amply shows that the County Tax Review Board . . . did review taxpayers' appeals for all three tax years." (App. p. 4) There is no evidence on the record to support this position.

Although the Hawaii Supreme Court found that the County's admitted policy of tampering with a taxpayer's appeal "for some reason" was not a violation of due process, it inconsistently confirmed the finding of facts and conclusion of law of the Tax Appeal Court which held the tampering of taxpayers' appeal was moot (App. p. 7). A major issue in the oral arguments before the Hawaii Supreme Court was whether constitutional due process violations that give rise to 42 U.S.C. section 1983 claims could be declared moot.

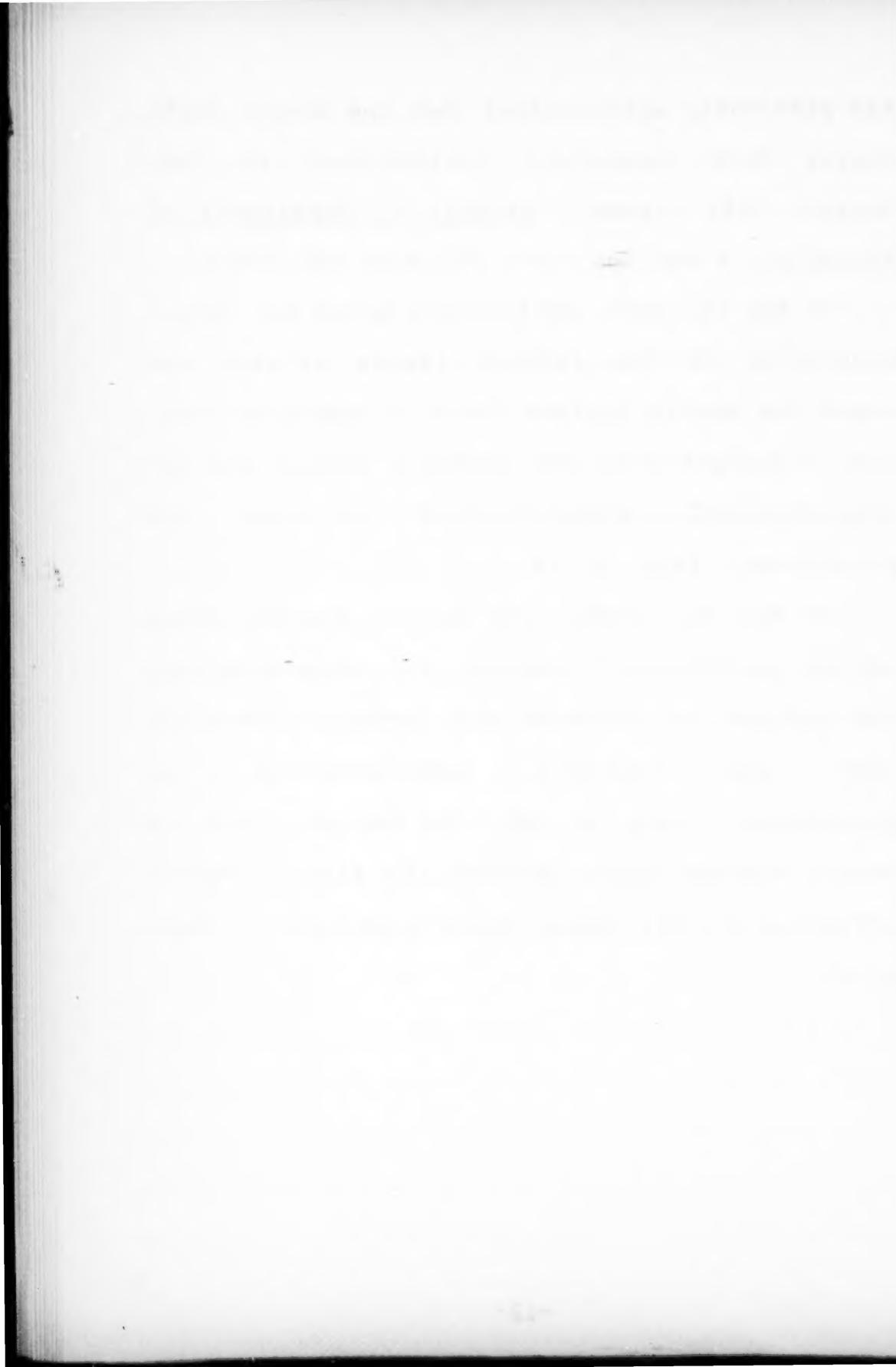
The Hawaii Supreme Court did not question the appropriateness of bringing a 42 U.S.C. Section 1983 claim in the Hawaii Tax Appeal Court when the relief requested was a return of excess taxes. The Hawaii Intermediate Court of Appeals



had previously acknowledged that the Hawaii State Courts have concurrent jurisdiction to hear Section 1983 claims. Makanui v. Department of Education, 6 Haw.App. 397, 721 P.2d 165 (1986).

On May 14, 1990, petitioners moved for reconsideration on the federal issues raised, and urged the Hawaii Supreme Court to exercise judicial oversight over the County's unfair and unconstitutional administrative policies and procedures. (App. p. 19)

On May 21, 1990, the Hawaii Supreme Court denied petitioners' request for consideration, and refused to exercise any judicial oversight over the County's administrative tax procedures. (App. p. 16) On May 30, 1990 the Hawaii Supreme Court entered its final judgment affirming the Tax Appeal Court's decision. (App. p. 1).

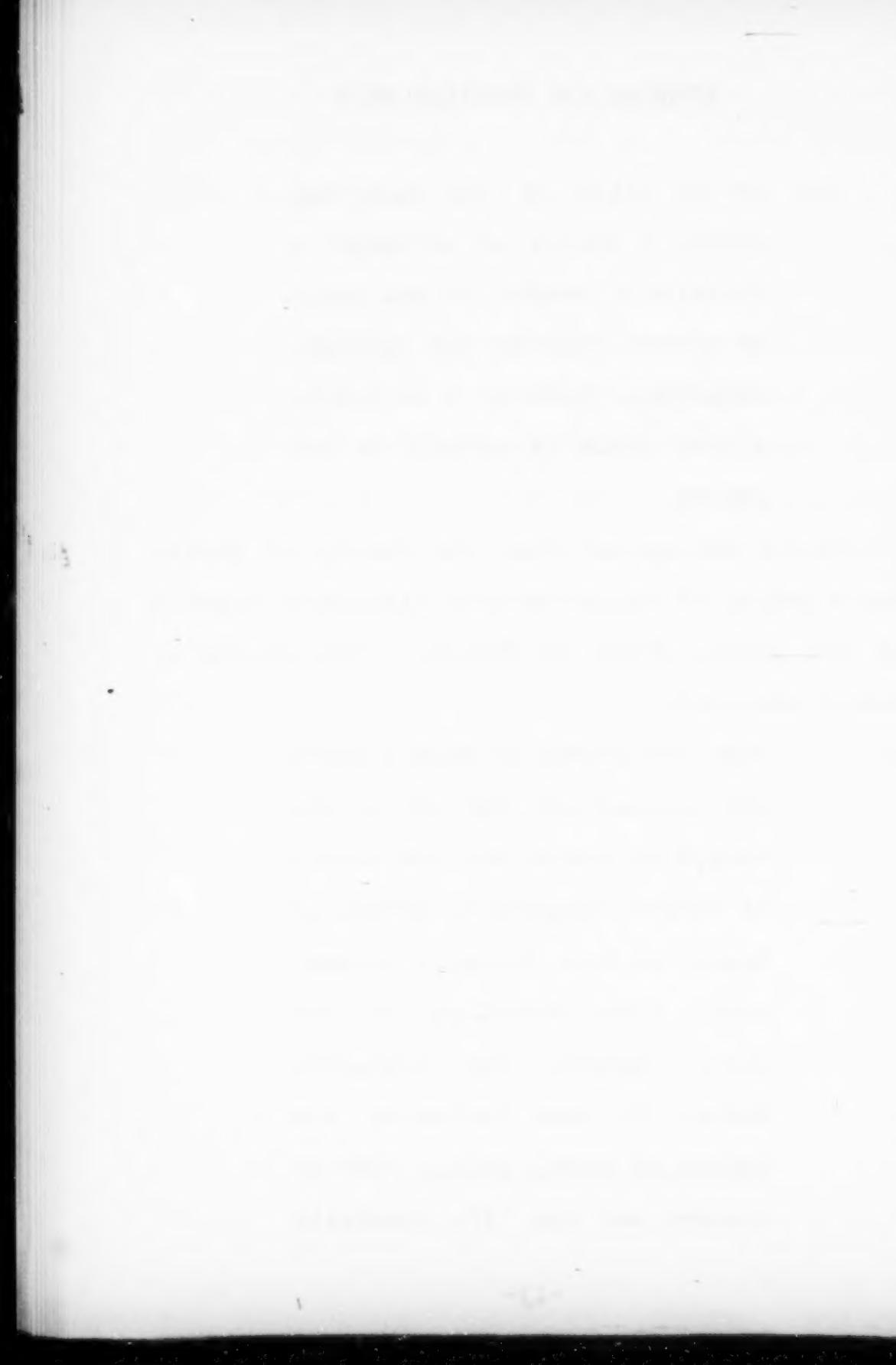


REASONS FOR GRANTING WRIT

- (1) IT IS PLAIN ON ITS FACE THE COUNTY'S POLICY OF ALTERING A TAXPAYER'S APPEAL TO THE BOARD OF REVIEW VIOLATES DUE PROCESS; THEREFORE, TAXPAYER'S 42 U.S.C. § 1983 CLAIM IS CORRECT ON THE MERITS.

It is undisputed that the County of Hawaii has a policy of tampering with taxpayers' appeals to the County Board of Review. The County of Hawaii admitted:

That the County of Hawaii agent who crossed out the '87 in the "Board of Review for the County of Hawaii Taxpayer's Notice of Appeal on Real Property Assessment" form described in the above Request for Admission Number 9, was following the County of Hawaii policy when he crossed out the '87. (emphasis



added Exhibit 12 in evidence,
App. p. 47).

A County policy which condones the tampering with a taxpayer's appeal to such an extent that 2 of the 3 tax years being appealed are eliminated is, on its face, a violation of due process.

The Hawaii Supreme Court has erred in upholding such an unconstitutional policy and should therefore be reversed. Often the only evidence the County Board or Review receives is the written material sent to it by taxpayers. Taxpayers, such as out-of-state petitioners, frequently don't appear at these hearings. Therefore, it is critical that the County Board of Review received untampered with appeals if it is to carry out its function.

The Hawaii Supreme Court has acknowledged that "for some reason" the County of Hawaii, acting as an adverse party, crossed out part of appellants' appeal to the Board of Review (App. p. 4). Taxpayers have little protection against this admitted County policy of tampering with appeals because all of their appeals are

processed through the County Real Property Tax Division. The protection that taxpayers have arises under the Constitution of the United States. The Hawaii Supreme Court's condoning and allowing the tampering of taxpayers' appeals by the County, takes away any pretense of being able to receive a fair hearing at the administrative proceedings held before the County Board of Review.

This current admitted County policy of tampering with taxpayers' appeals should be struck down as unconstitutional on its face.

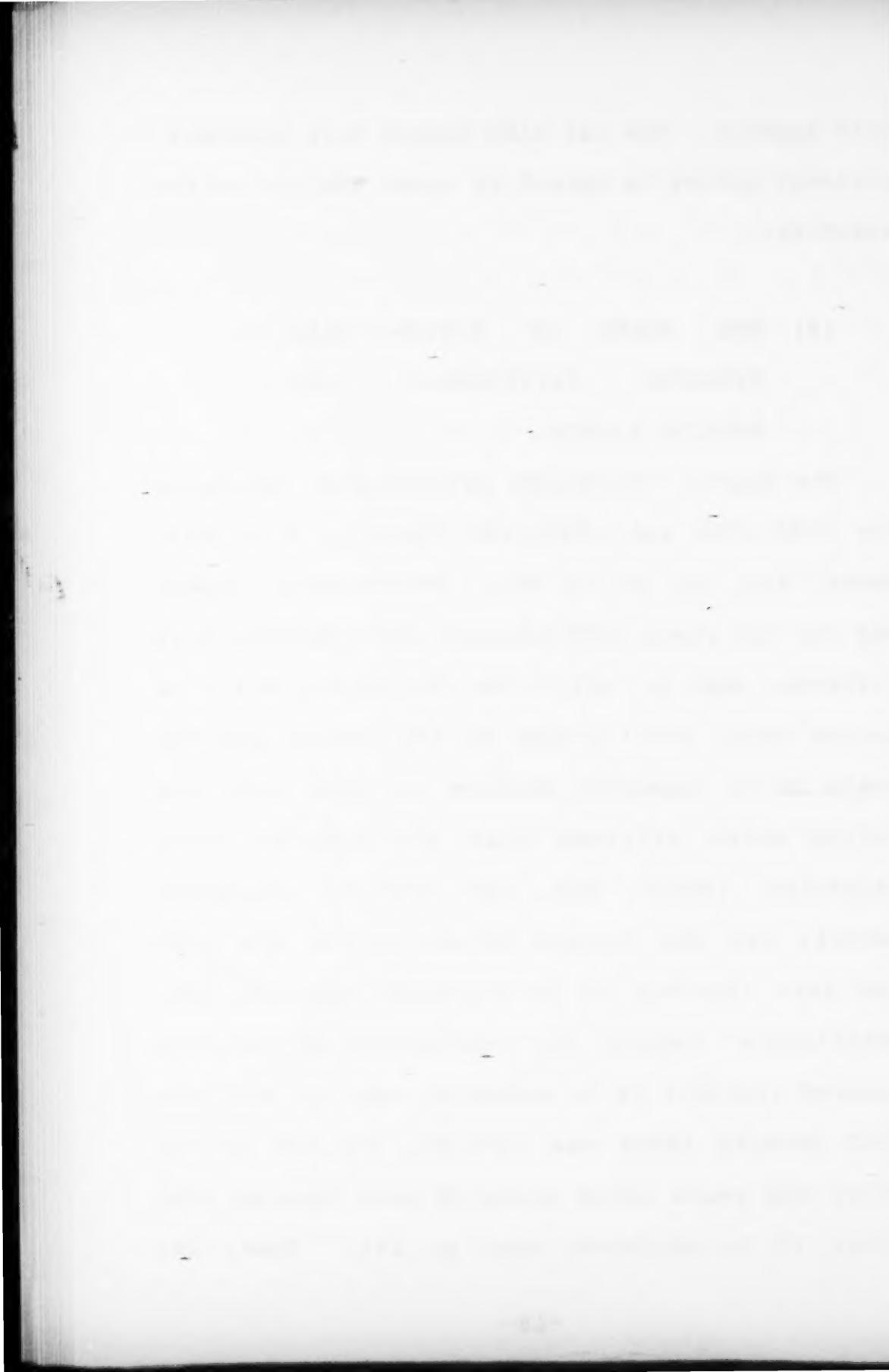
The Hawaii courts have demonstrated their refusal to exercise any judicial oversight concerning the County's unconstitutional administrative proceedings and policies. Such refusal sends a message to the County agents that they can do whatever they want in administrative proceedings, including ignoring the rights guaranteed to individuals under the United States Constitution. Unless this Petition for Writ of Certiorari is heard, one can expect the County of Hawaii to continue with this policy of tampering



with appeals. One can also expect this unconstitutional policy to spread to other administrative agencies.

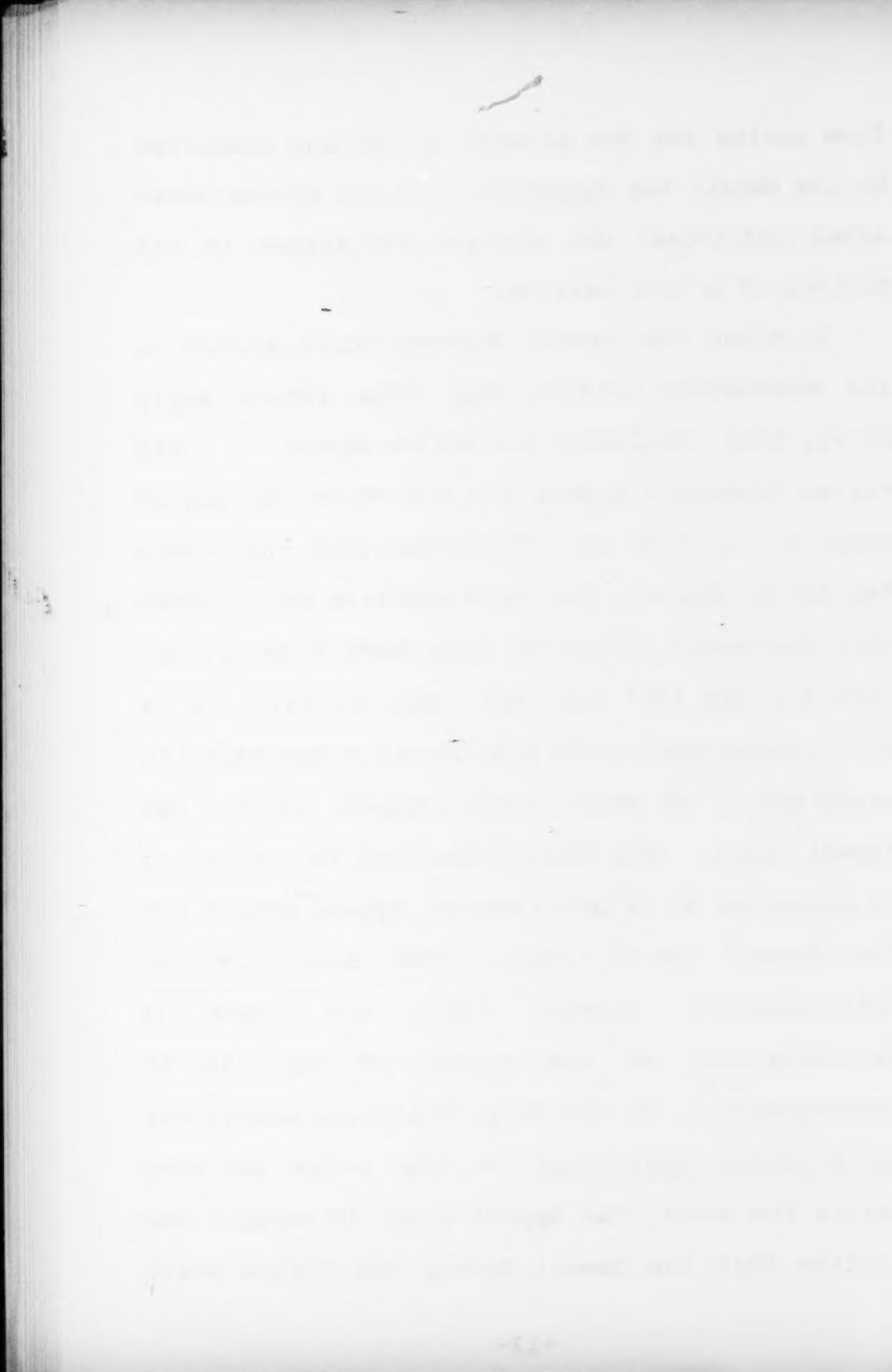
(2) THE BOARD OF REVIEW ALSO
VIOLATED PETITIONERS' DUE
PROCESS RIGHTS.

The County reassessed petitioners' residence for 1985-1986 and 1986-1987 (Exhibit 2 in evidence, App. pp. 35 to 40). Petitioners' appeal was for tax years 1985 through 1987 (Exhibit 3 in evidence, App. p. 40). Yet the County Board of Review never even looked at the issues and the years being appealed because it made only one ruling which affirmed that the \$46,820 total valuation (which was the 1985-86 appraisal amount) was the correct valuation for the 1987 tax year (Exhibit 17 in evidence, App. p. 14). Petitioners' request for conclusions of law were ignored (Exhibit 16 in evidence, App. p. 49), the \$100 penalty issue was ignored, and two of the three tax years being appealed were ignored (Exhibit 17 in evidence, App. p. 14). Thus, far



from curing any due process violations committed by the Hawaii tax appraiser, the Tax Review Board added additional due process violations in its mockery of a fair hearing.

Although the Hawaii Supreme Court stated in its Memorandum Opinion that "the record amply shows, that the County Tax Review Board . . . did review taxpayers appeal for all three tax years" (App. p. 4), this is inconsistent with the County Tax Review Board's own determination which shows that the Board of Review only made a determination for the 1987 tax year (App. p. 14). It is also inconsistent with the County's admission to paragraph 2 of petitioners' appeal to the Tax Appeal Court. The County admitted in its answer to paragraph 2, of petitioners' appeal before the Tax Appeal Court, that, "The Board refused [petitioners'] appeal (did not make a determination) on the appeal of the '86-'87 reassessment." Furthermore, there was absolutely no evidence introduced in the trial de novo before the Hawaii Tax Appeal Court to support the finding that the Hawaii County Tax Review Board



ever considered the contested 1985 and 1986 reassessed tax years.

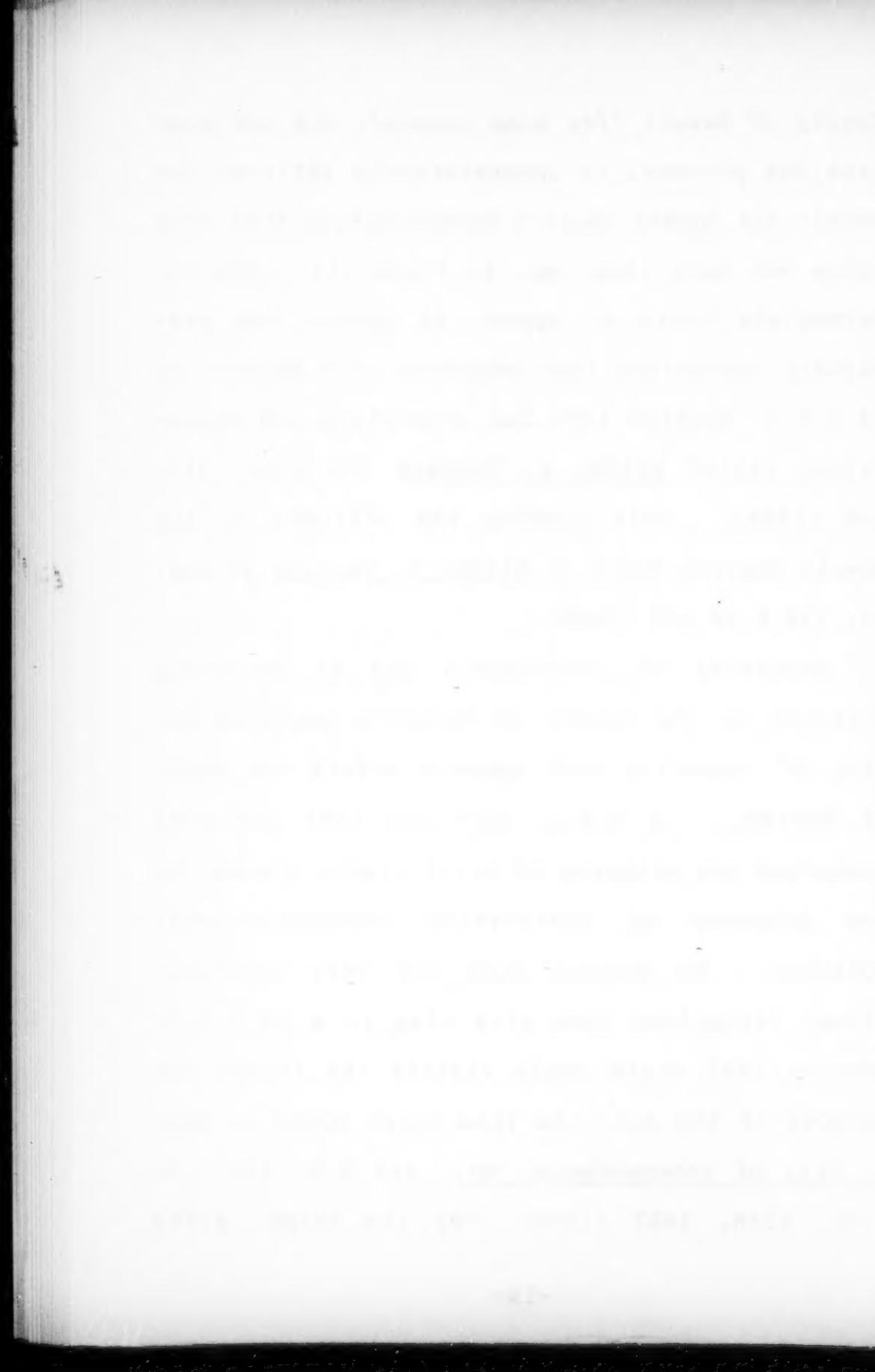
Unless the Petition for Writ of Certiori is granted, one can presume that the County Board of Review will continue their practice of denying due process rights to taxpayers in administrative hearings. The Hawaii courts have refused to acknowledge or deal with the obvious constitutional deficiencies in these administrative hearings. Thus, it falls to this court to require the County of Hawaii to provide constitutional administrative hearings to United States citizens.

(3) THE HAWAII SUPREME COURT ERRED
IN DETERMINING THAT MOOTNESS IS
A DEFENSE TO 42 U.S.C. SECTION
1983 CIVIL RIGHTS CLAIMS

The primary oral argument before the Hawaii Supreme Court was whether mootness was a defense to an otherwise valid 42 U.S.C. Section 1983 claim. While the Hawaii Supreme Court held that the tampering with petitioners' appeal by the

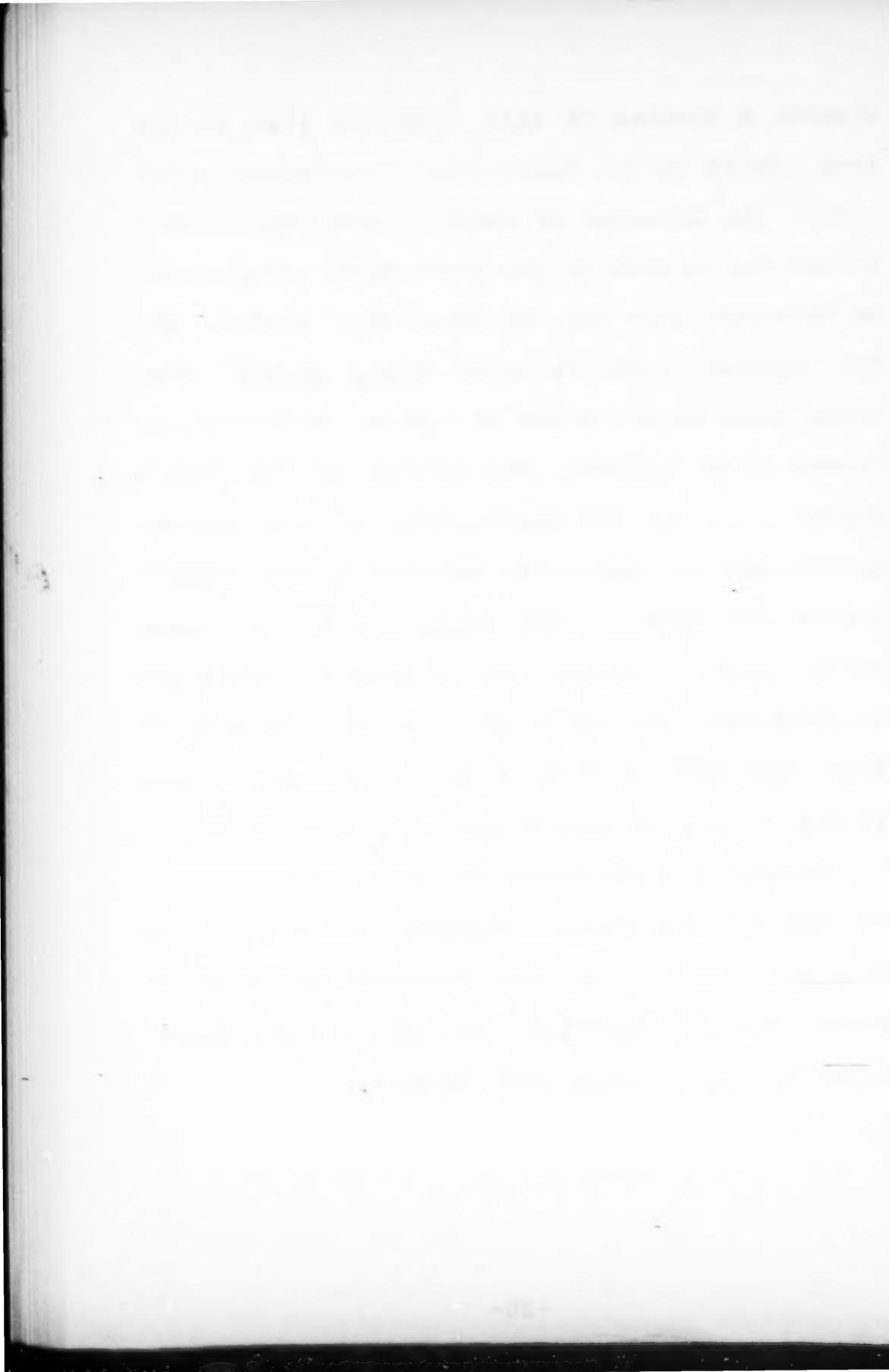
County of Hawaii "for some reason", did not violate due process, it inconsistently affirmed the Hawaii Tax Appeal Court's determination that this issue was moot (App. pp. 4, 7 and 11). The Intermediate Court of Appeal of Hawaii has previously recognized that mootness is a defense to 42 U.S.C. Section 1983 for injunctive and declaratory relief Wilder v. Tanouye 782 P.2d. 347, 348 (1988). This finding was affirmed by the Hawaii Supreme Court in Wilder v. Tanouye 71 Haw. 30, 779 P.2d 390 (1989).

Thousands of individuals can be adversely effected by the County of Hawaii's admitted policy of tampering with appeals before the Board of Review. 42 U.S.C. Sections 1983 and 1988 encourage the bringing of civil rights claims for the purposes of overturning unconstitutional policies. To declare moot the very constitutional violations that give rise to a 42 U.S.C. Section 1983 claim would violate the intent and purpose of the Act. As this Court noted in Owen v. City of Independence, Mo., 445 U.S. 635, 100 S.Ct. 1398, 1407 (1980), "By its terms, §1983



creates a species of tort liability that on its face admits of no immunities. [Citation omitted]. Its language is absolute and unqualified; no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the Act imposes liability upon 'every person' who, under color of state law or custom, 'subjects, or causes to be subject, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.' And Monell held that these words were intended to encompass municipal corporations as well as natural 'persons.'" Thus, mootness is clearly not a defense to this 42 U.S.C. Section 1983 claim.

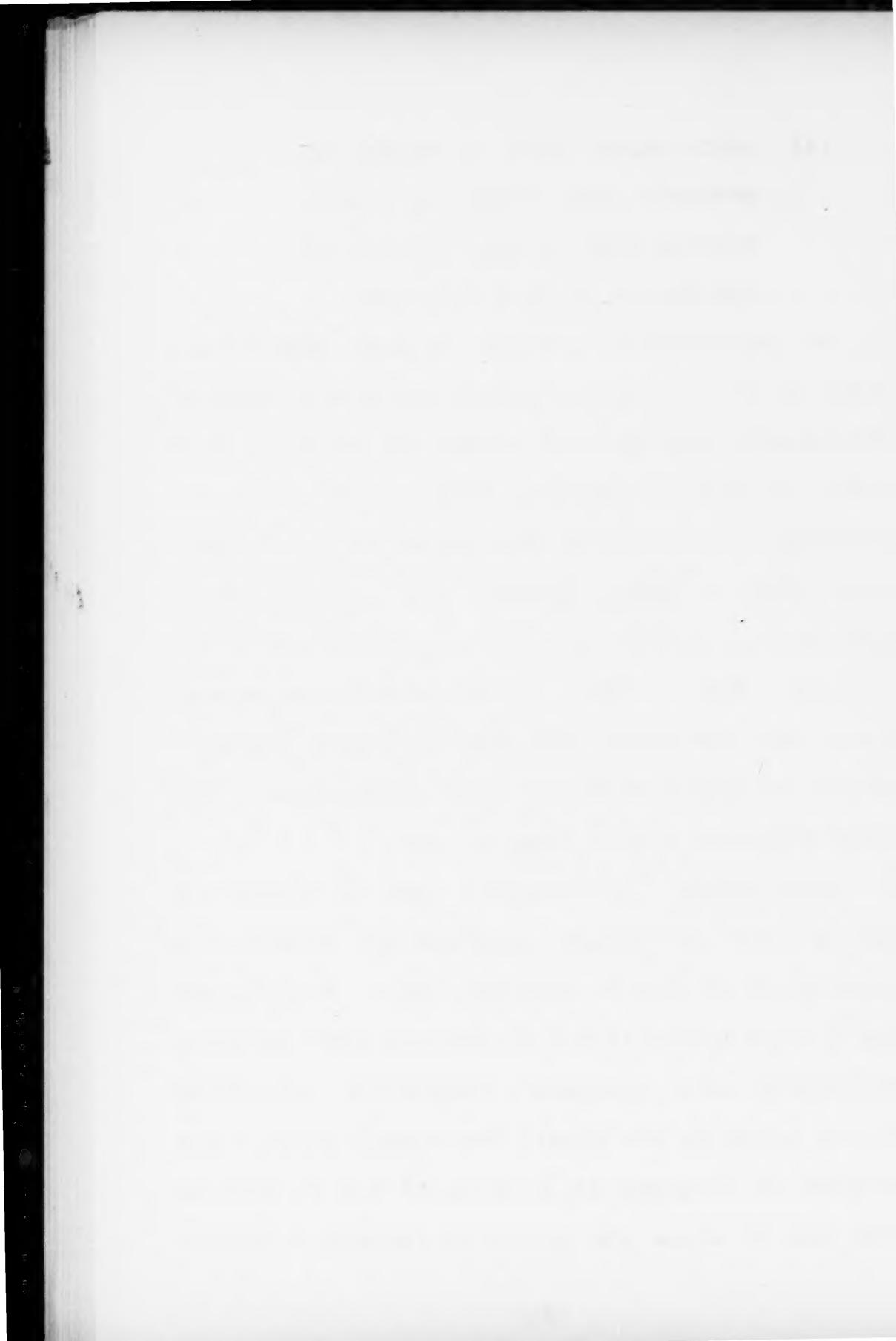
Unless this Petition for Writ of Certiorari is heard, the Hawaii Supreme Court will to continue to utilize the mootness doctrine to allow County agencies to deny individuals' Constitutional rights with impunity.



(4) PETITIONERS HAVE A RIGHT TO
ATTORNEY FEES UNDER 42 U.S.C.
SECTION 1988 IF THEY PREVAIL ON
THE MERITS IN THIS PETITION.

If petitioners prevail in any significant issue in this litigation which achieve[s] some of the benefit the parties sought in bringing suit under 42 U.S.C. Section 1983 claim, they are entitled to attorney's fees under 42 U.S.C. Section 1988. Texas Teacher v. Garland School District, ____ U.S. ____ , 109 S.Ct. 1486, 103 L.Ed.2d 866. (1989). The Hawaii Tax Appeal Court has the power and the statutory authorization to award attorney fees under Hawaii Revised Statutes 232-12 (App. p. 55).

Petitioners' tax appeal was a "suit in equity" and a "proper proceeding" within the meaning of 42 U.S.C. Section 1983. Petitioners had a right under 42 U.S.C. Section 1983 to bring procedural due process complaints involving County taxes to the Hawaii Tax Appeal Court. The purpose of Congress in passing 42 U.S.C. Section 1983 was to allow the courts to redress unconsti-

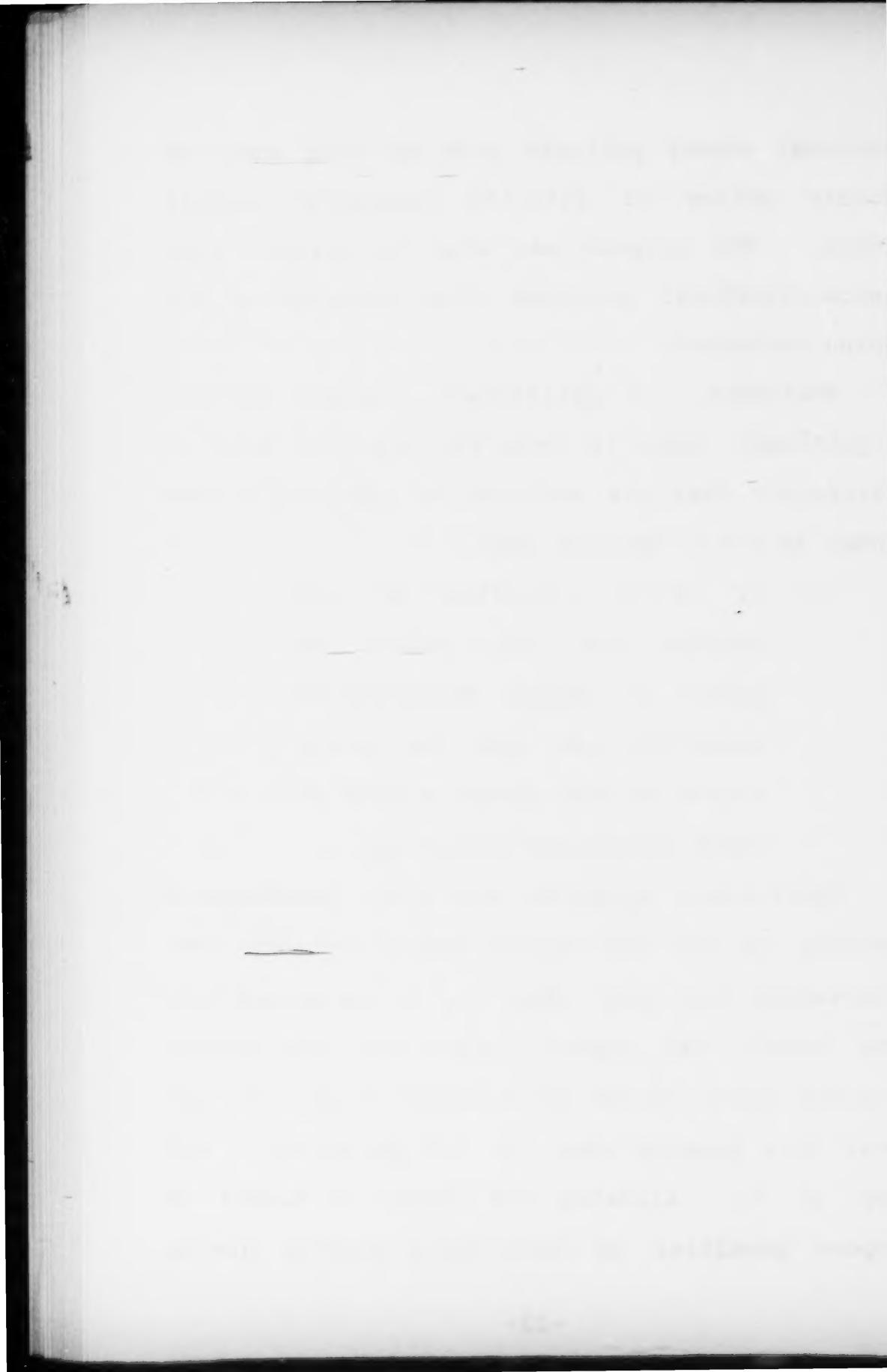


tutional county policies such as this admitted County policy of altering taxpayers' appeal forms. The purpose was also to prevent such unconstitutional policies from flourishing and going unchecked.

Therefore, if petitioners prevail on any significant issue in this Petition for Writ of Certiorari they are entitled to attorney's fees under 42 U.S.C. Section 1988.

(5) IT IS A VIOLATION OF DUE
PROCESS FOR THE COUNTY OF
HAWAII TO CHARGE REASSESSMENT
PENALTIES AND FOR THE STATE
COURTS TO DENY APPEAL RIGHTS ON
THESE REASSESSED PENALTIES.

Petitioners appealed the \$100 reassessment penalty to the Tax Appeal Court for the 1985 reassessed tax year (App. p. 9, paragraph 4). The Hawaii Tax Appeal Court and the Hawaii Supreme Court denied petitioners' rights to appeal this penalty (App. p. 12, paragraph 5 and App. p. 7). Allowing the County of Hawaii to impose penalties on individuals without giving



them any rights to seek judicial intervention is a violation of the Fourteenth Amendment's guarantee of due process. Unless the Petition for Writ of Certiorari is heard, the County of Hawaii will continue to impose penalties on individuals in their administrative hearings and the Hawaii courts will continue to deny these individuals any right of judicial review of those penalties. Therefore, this Petition for Writ of Certiorari should be granted.

CONCLUSION

The Hawaii Supreme Court has condoned and legitimized the County of Hawaii's policy of tampering with a taxpayer's appeal. This is a radical departure from traditional due process protection afforded to United States citizens under the 14th Amendment to the United States Constitution. The purpose of the due process clause is to guarantee to all citizens a full and fair hearing. The County of Hawaii's admitted policy of tampering with taxpayers' appeals denies citizens the very protection that the due

process clause is designed to protect. It denied petitioners the right to a hearing on two of the three tax years they appealed.

This initial due process violation was further compounded by the Tax Board of Review's failure to rule on the issues before it and by the Hawaii's Court's failure to exercise their judicial responsibilities in reviewing improper administrative proceedings.

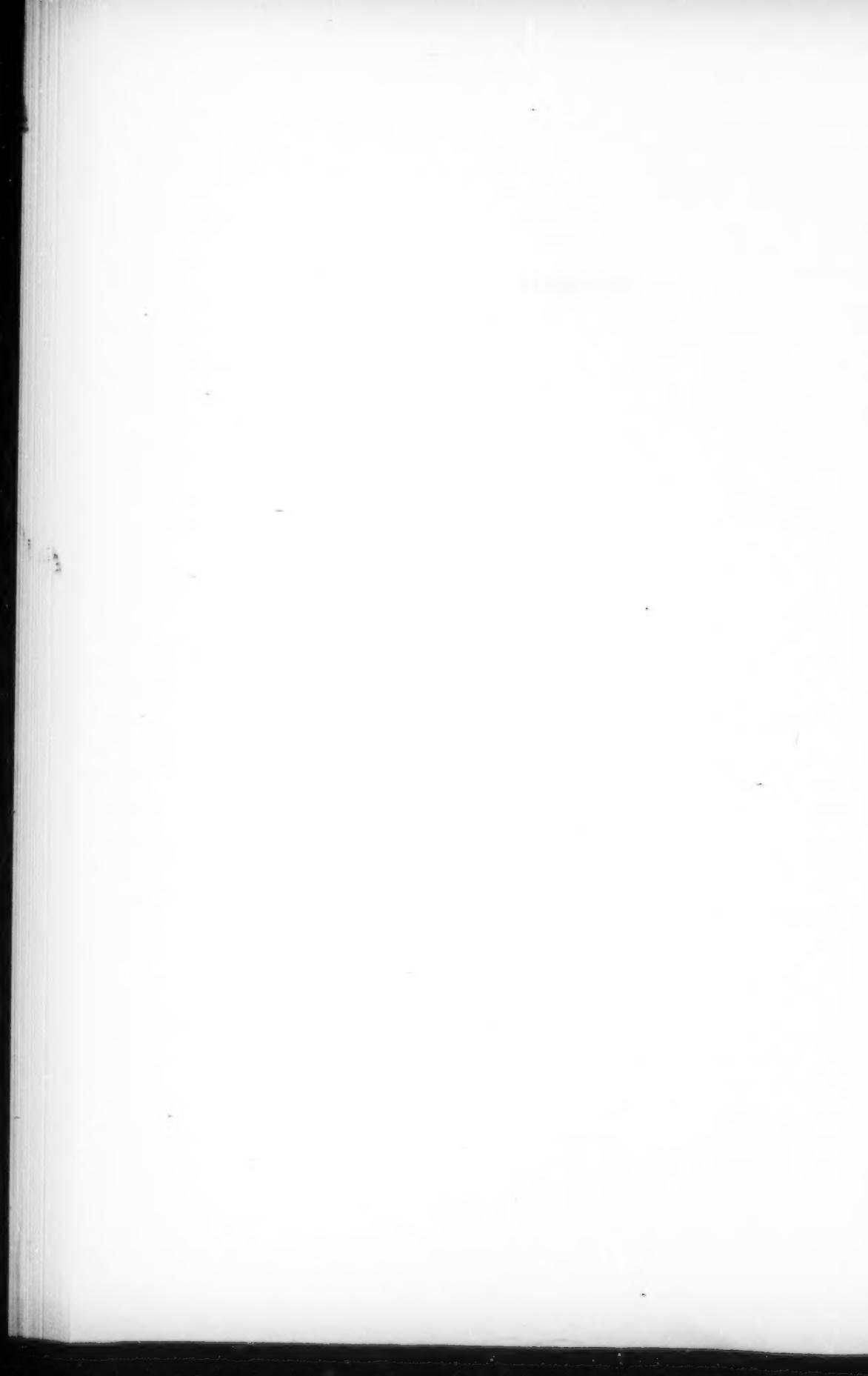
Furthermore, the Hawaii Supreme Court's recognition of the defense of mootness to 42 U.S.C. Section 1983 civil rights claims is a unique departure from decisions of this Court which have not recognized any privileges, immunities or defenses to 42 U.S.C. Section 1983 claims. This Petition for Writ of Certiorari should therefore be granted.

Respectfully submitted,

Rachelle J. Nicolle
Rachelle J. Nicolle
Counsel for Petitioners
800 North Haven Avenue
Suite 120
Ontario, California 91764
(714) 989-8584

Dated September 18, 1990
Rachelle J. Nicolle
Counsel of Record
800 North Haven, Suite 120
Ontario, California 91764
Admitted August 6, 1990
[Appendix]

APPENDIX



NO. 14045

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of) TAX APPEAL CASE NO. 2529
the Tax Appeal)
of) APPEAL FROM FINDINGS OF
BRYAN W. NICOLLE-) FACT AND CONCLUSIONS OF
WAGNER and RACHELLE) LAW AND ORDER FILED ON
J. NICOLLE-WAGNER) AUGUST 11, 1989
) TAX APPEAL COURT
)
HONORABLE ROBERT G. KLEIN,
Judge

JUDGMENT ON APPEAL

Pursuant to the Memorandum Opinion of the Supreme Court of the State of Hawaii filed on May 3, 1990, the order of the lower court entered on August 11, 1989, is affirmed.

Dated: Honolulu, Hawaii, May 30, 1990.

BY THE COURT:

[signature]
Clerk

APPROVED
[signature]
Justice



The form of the foregoing notice is hereby approved and IT IS ORDERED that the same issue forthwith.

Dated: Honolulu, Hawaii, May 30, 1990.

[signature]
JUSTICE



No. 14045

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of) TAX APPEAL CASE NO. 2529
the Tax Appeal)
of) APPEAL FROM FINDINGS OF
BRYAN W. NICOLLE-) FACT AND CONCLUSIONS OF
WAGNER and RACHELLE) LAW AND ORDER FILED ON
J. NICOLLE-WAGNER) AUGUST 11, 1989
) TAX APPEAL COURT
)
) HONORABLE ROBERT G. KLEIN,
Judge

[Opinion Date May 3, 1990]

MEMORANDUM OPINION

Bryan W. and Rachelle J. Nicolle-Wagner (Taxpayers) are owners of real property located in the County of Hawaii. For the 1985 and 1986 real property tax years, Taxpayers claimed and originally were allowed homeowner's exemptions. Subsequently, the County of Hawaii (County) discovered that Taxpayers were not living on the property, but instead were renting it to others. Consequently, the County sent amended notices of property assessments to Taxpayers for those two tax years. The only difference between the original assessment notices and amended assessment notices was the deletion of homeowner's exemp-

tion; the valuation of the land and building remain the same.

Taxpayers appealed from the amended notices of property assessment. On the notice of appeal of assessment, Taxpayers indicated a challenge to the assessments for the 1985, 1986, and 1987 tax years. A County employee, for some reason, crossed out the "1987" on Taxpayers notice of appeal. Taxpayers argue that their right to appeal cannot be negated by such action of a county employee, and therefore, they raise a claim of violation of due process.

Despite the fact that "1987" was crossed out, the Tax Appeals Court found, and the record amply shows, that the County Tax Review Board and the Tax Appeals Court did review Taxpayers appeals for all three tax years. Taxpayers' due process rights were not violated.

Taxpayers' appeals did not challenge the denial of homeowner's exemptions. Rather, they appealed the valuation of the land and building. The County took the position that an appeal from an amended notice of assessment can chal-

lence only those items which had been amended from the original notice. Since the land and building valuations remained the same, the time for that appeal was governed by Hawaii County Ordinance § 19-91, 1/ and the Taxpayers appeal came too late. The County Tax Review Board and the Tax Appeals Court agreed with the County's analysis.

The Tax Appeals Court further held that even if Taxpayers' appeals were timely filed,

1/ Hawaii County Ordinance 19-91, in pertinent part, provides:

Appeals. Any taxpayer, who may deem himself aggrieved by an assessment made by the director . . . may appeal from the assessment . . . to the board of review or the tax appeal court pursuant to section 232-16, HRS on or before April 9 preceding the tax year, as provided in this chapter.



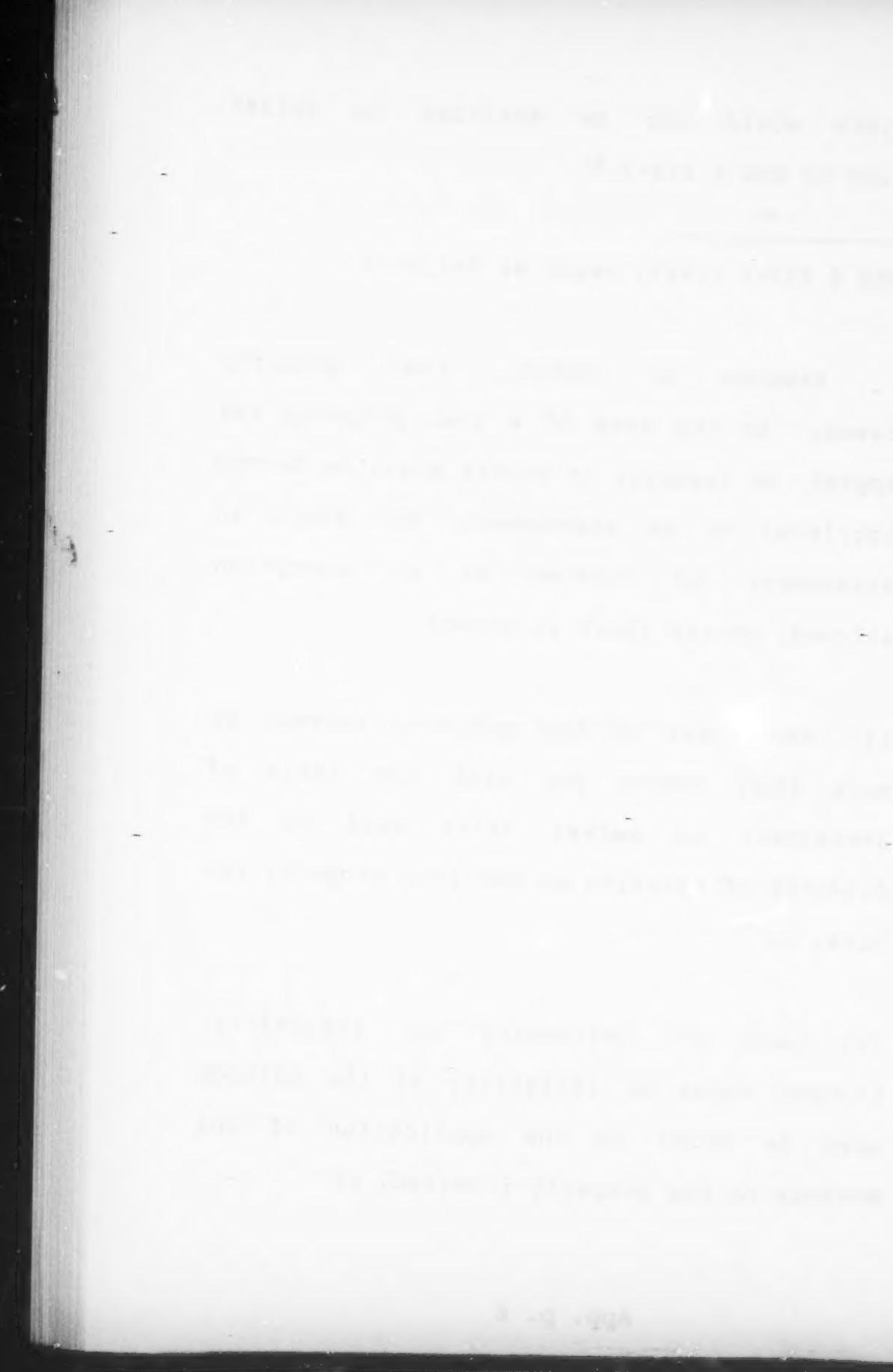
taxpayers would not be entitled to relief
pursuant to HRS § 232-3. 2/

2/ HRS § 232-3 (1985) reads as follows:

Grounds of appeal, real property taxes. In the case of a real property tax appeal, no taxpayer or county shall be deemed aggrieved by an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown:

(1) Assessment of the property exceeds by more than twenty per cent the ratio of assessment to market value used by the director of taxation as the real property tax base, or

(2) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or



We concur with the findings and conclusion of
the Tax Appeals Court, and therefore, affirm.

DATED: Honolulu, Hawaii, May 3, 1990.

Ryan W. Nicolle-Wagner, [signature]
Pro Se, for Appellants [signature]
[signature]
Gerald Takase, Deputy [signature]
Corporation Counsel, for [signature]
Appellee County of Hawaii [signature]

Footnote 2 (cont.)

(3) Denial of an exemption to which the
taxpayer is entitled and for which the
taxpayer has qualified, or

(4) Illegality, on any ground arising under
the Constitution or laws of the United States
or the laws of the State (in addition to the
ground of illegality of the methods used,
mentioned in clause (2)).



RICHARD I. MIYAMOTO 848
Corporation Counsel

GERALD TAKASE 3260
Deputy Corporation Counsel
County of Hawaii
Hilo Lagoon Centre
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Tel. No. 961-8251

Attorneys for Appellee County of Hawaii

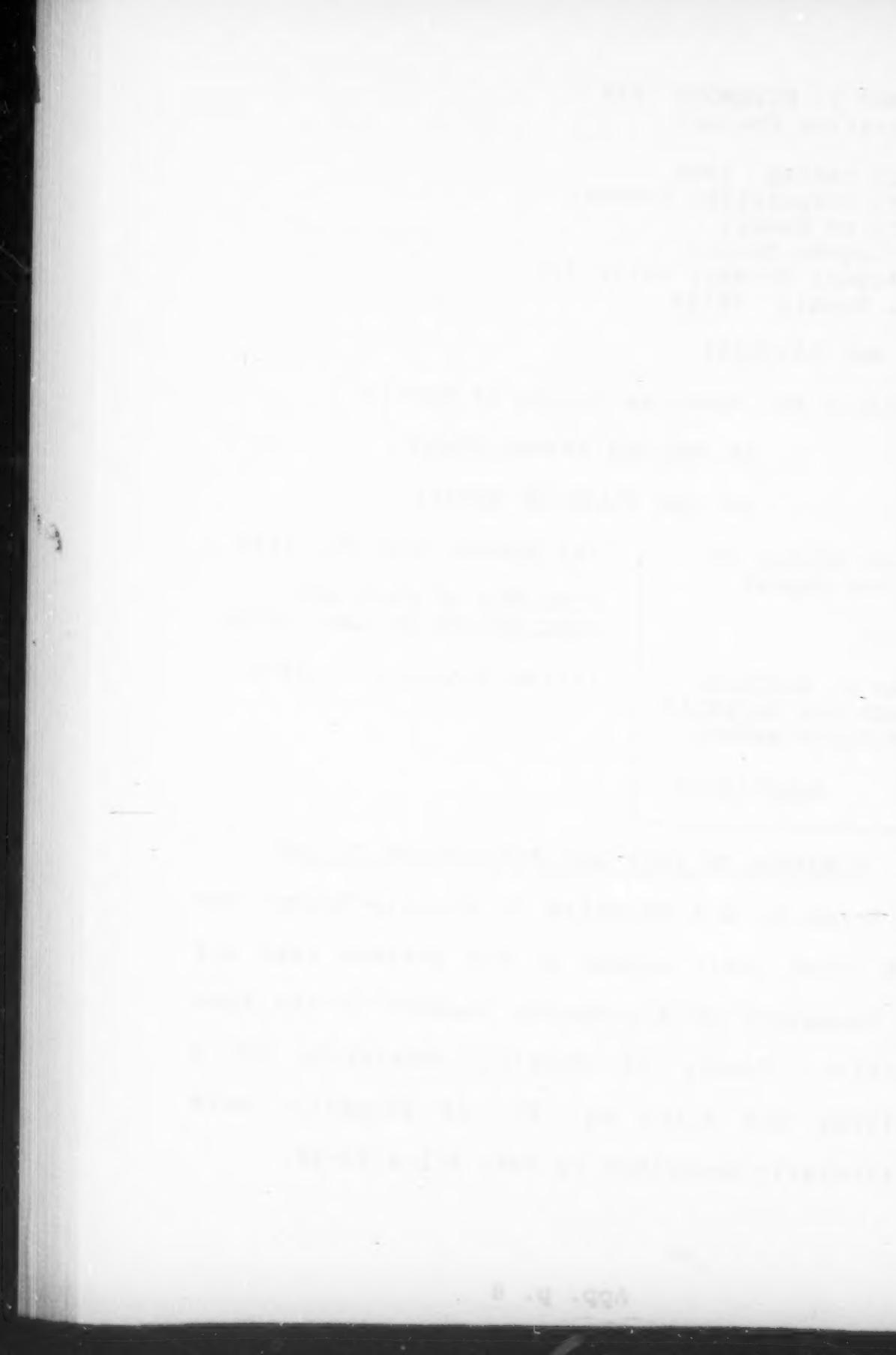
IN THE TAX APPEAL COURT

OF THE STATE OF HAWAII

In the Matter of) TAX APPEAL CASE NO. 2529
the Tax Appeal)
of) FINDINGS OF FACT AND
BRYAN W. NICOLLE-) CONCLUSIONS OF LAW; ORDER
WAGNER and RACHELLE)
J. NICOLLE-WAGNER)
Appellants.) [Filed August 11, 1989]
)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Bryan W. and Rachelle J. Nicolle-Wagner who have filed their appeal in the present case are the taxpayers of a property located in the Puna District, County of Hawaii, consisting of a dwelling and 8,103 sq. ft. of property, more particularly described by TMK: 3-1-4-32-40.

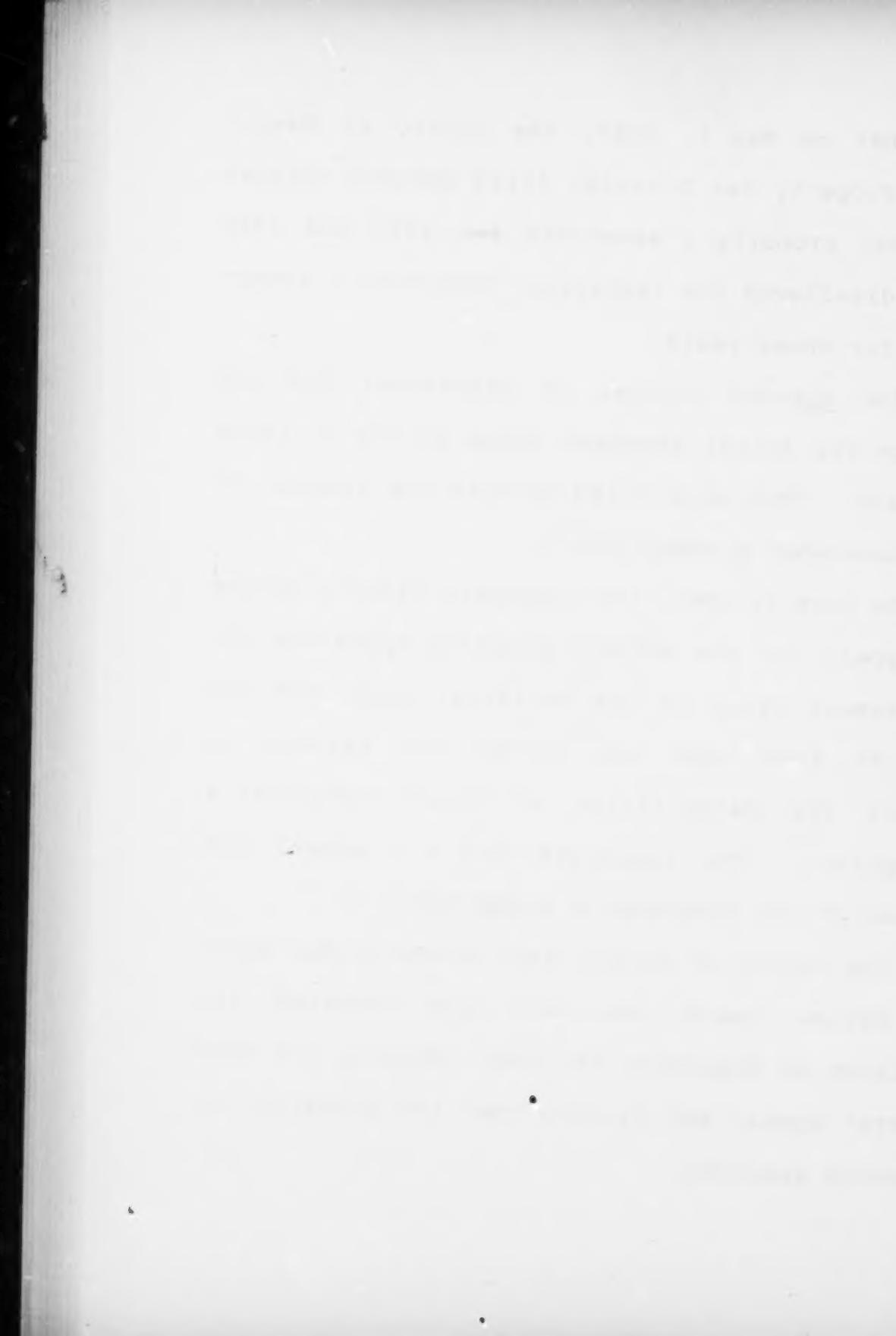


4. That on May 7, 1987, the County of Hawaii
Real Property Tax Division filed amended notices
of real property assessments for 1985 and 1986
that disallowed the taxpayers' homeowner's exemp-
tion for those years.

5. The amended notices of assessment did not
change the actual assessed value of the building
or land. They were filed to note the removal of
the homeowner's exemption.

6. On June 2, 1987, the taxpayers filed a notice
of appeal for the subject property appealing the
assessment value of the building, land, and the
\$100.00 fine that was levied for failure to
report the cancellation of their homeowner's
exemption. The taxpayers did not appeal the
denial of the homeowner's exemption.

5. The County of Hawaii Real Property Tax Board
of Review heard the case and rendered its
decision on September 14, 1987, denying the tax-
payers' appeal and finding that the property was
properly assessed.



1. The taxpayers appealed to the Tax Appeal Court on October 8, 1987, and the case was subsequently heard on March 31, 1989.

2. Section 19-91 of the Hawaii County Code relating to real property appeals requires that all appeals of real property assessments be filed by April 9th of the preceding tax year.

3. The taxpayers did not appeal the denial of the homeowner's exemption, but instead chose to appeal the assessed valuations of their property for 1985-86.

4. The taxpayers had never previously filed any appeal of their real property assessments for the 1985 and 1986 tax years.

5. The taxpayers presented evidence of valuation based on their listing of their property for sale. This evidence was available to the taxpayers during the time in which the tax appeals for 1985 and 1986 could properly have been filed.

6. The market data provided by the taxpayers was insufficient to sustain their burden of proof in proving their assessment, even if they were

llowed to challenge the real property tax assessment.

2. Even though a County employee may have altered the taxpayers' notice of appeal document, the Tax Review Board still heard the taxpayers' appeal in this case.

CONCLUSIONS OF LAW

1. The taxpayers did not file their notice of appeal for their 1985 and 1986 appeals of assessments in a timely manner.

2. The right to appeal a denial of a home exemption does not waive deadlines for appealing of real property tax assessments.

3. The filing of the taxpayers' notice of appeal on June 2, 1987, was after the April 9th deadline and therefore was not timely for an appeal of their 1987 assessment.

4. Any violation of due process that may have occurred due to the County of Hawaii tax appraiser's alteration of the taxpayers' notice of appeal is rendered moot by the Tax Review Board's consideration of the appeal.

5. The taxpayers were further precluded from raising the appeal of their real property tax assessments since they failed to appeal the denial of their homeowner's exemption, which provided the only basis for them to appeal after the April 9th deadline.

6. The taxpayers waived any right to appeal their 1985 and 1986 assessments by not filing their notice of appeals for those respective years by April 9th of the preceding year.

7. The taxpayers' appeal is denied for failure to establish the following grounds of appeal as established by § 232-3, HRS which are:

(1) Assessment of the property exceeds by more than twenty per cent of the ratio of assessment to market value used by the director of taxation as the real property tax base, or

(2) Lack of uniformity or inequality, brought about by illegality of the methods used

or error in the application of the methods to the property involved, or

- (3) Denial of an exemption to which the taxpayer is entitled and for which the taxpayer has qualified, or
- (4) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State.

ORDER

Based on the foregoing findings of fact and conclusions of law, the taxpayers' appeal is hereby denied.

Dated: Honolulu, Hawaii, Aug. 11, 1989.

[signature]
Judge of the above-entitled

court

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[EXHIBIT 17 IN EVIDENCE]

RP FORM P-52(6-87)

COUNTY OF HAWAII

DEPT OF FINC

BOARD OF REVIEW DECISION

[filed September 14, 1987]

IN THE MATTER OF THE

TAX MAP KEY NUMBER

TAX APPEAL OF: BRYAN

Z-S-PLAT-PARCEL - HPR - TEN

W/R. NICOLLE-WAGNER

1-4- 032- 040

0000-000

APPEAL NO.

TAXPAYER OR REPRESENT- NO (CORRESPONDENCE)

TATIVE PRESENT:

DECISION:

HAVING HEARD THE ABOVE-ENTITLED APPEAL AND DETERMINING THE FACTS AS STATED BELOW, IT IS HEREBY DETERMINED THAT THE VALUE OF THE PROPERTY AS OF JANUARY 1, 1987 IS:

BUILDING: \$42,203 EXEMPTION: \$0

LAND: \$4,617 TOTAL: \$46,820

UPON CONSIDERATION OF ALL THE FACTS BEFORE THE BOARD, THE BOARD FINDS THAT THE DIRECTOR'S ASSESSMENT IS SUSTAINED FOR THE FOLLOWING

REASON: OTHER: ANY PERSON WHO HAS BEEN ALLOWED
AN EXEMPTION HAS A DUTY TO REPORT TO THE ASSESSOR
WITHIN 30 DAYS AFTER HE CEASES TO QUALIFY FOR
SUCH AN EXEMPTION.

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL DOCUMENT WHICH IS ON FILE IN
THE OFFICE OF THE DIRECTOR OF FINANCE, COUNTY OF
HAWAII.

SEP 14 1987

[signature]

[signature]

DATE

DIRECTOR OF
FINANCE

CHAIRMAN, BOARD
OF REVIEW

SEP 14 1987

DATE DECISION FILED:

FURTHER RIGHT OF APPEAL:

(1) WITHIN 30 DAYS AFTER THIS DECISION HAS BEEN
FILED, THE TAXPAYER OR THE COUNTY MAY APPEAL TO
THE TAX APPEAL COURT: AND (2) WITHIN 30 DAYS AFTER
THE DECISION OF THE TAX APPEAL COURT, THE
TAXPAYER OR THE COUNTY MAY APPEAL TO THE HAWAII
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of) TAX APPEAL CASE NO. 2529
the Tax Appeal)
of) APPEAL FROM FINDINGS OF
BRYAN W. NICOLLE-) FACT AND CONCLUSIONS OF
WAGNER and RACHELLE) LAW AND ORDER FILED ON
J. NICOLLE-WAGNER) AUGUST 11, 1989
) TAX APPEAL COURT
)
HONORABLE ROBERT G. KLEIN,
Judge

ORDER

Upon consideration of Taxpayers-
Appellants' Motion for Reconsideration,

IT IS HEREBY ORDERED that the motion is
denied.

DATED: Honolulu, Hawaii, May 3, 1990.

[signature]
[signature]
[signature]
[signature]
[signature]



BRYAN W. NICOLLE-WAGNER
RACHELLE J. NICOLLE- WAGNER
1250 Oakcrest Circle
Corona, California 91720
Tel. No. (714) 272-4637

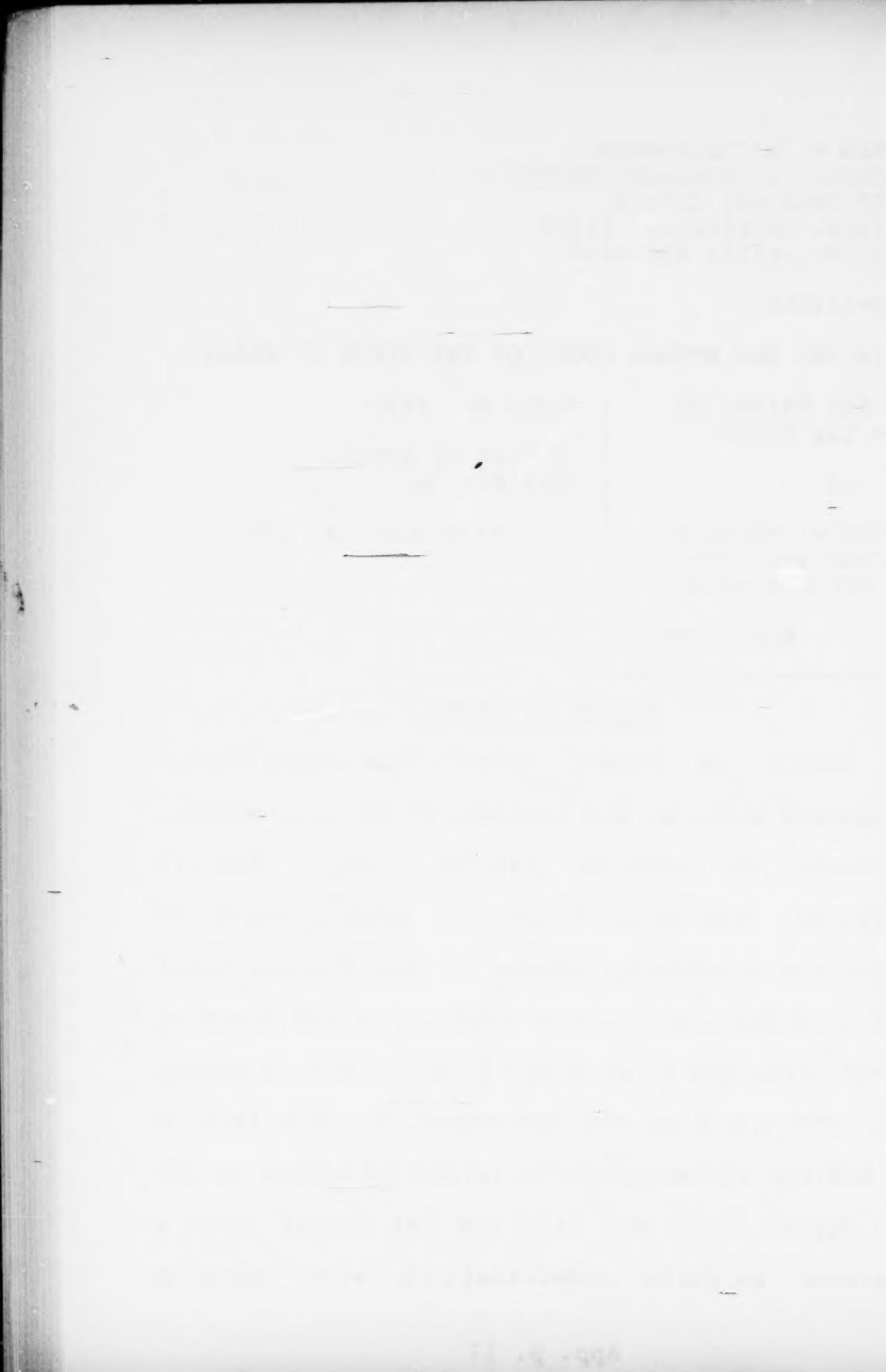
Appellants

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of) Case No. 2529
the Tax Appeal)
of) NOTICE OF APPEAL
BRYAN W. NICOLLE-) EXHIBIT "A"
WAGNER and RACHELLE)
J. NICOLLE-WAGNER)
Appellants.)
)

NOTICE OF APPEAL

Notice is hereby given that Appellants-Taxpayers Bryan W. and Rachelle J. Nicolle-Wagner, pursuant to Section 232-19, Hawaii Revised Statutes, and Rule 3 of the Hawaii Rules of Appellate Procedure, appeal to the Supreme Court and Intermediate Court of Appeals of the State of Hawaii from the final order filed herein on August 11, 1989 and from the Tax Appeal Court's failure to address issues properly raised on appeal to the Tax Appeal Court and from the Tax Appeal Court's improper ex parte communications with opposing



counsel in the above-entitled matter. A copy of the Tax Appeal Court's final order in the above-entitled matter is attached hereto as Exhibit "A".

Dated: Corona, California, August 24, 1989.

Brian W. Nicolle-Wagner

Rachelle J. Nicolle-Wagner
Appellants



IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of) Case No. 2529
the Tax Appeal)
of) MOTION FOR RECONSIDERATION
BRYAN W. NICOLLE-)
WAGNER and RACHELLE) TAX APPEAL COURT
J. NICOLLE-WAGNER) HONORABLE ROBERT G. KLEIN
Appellants.) Judge
[Filed May 14, 1990]

MOTION FOR RECONSIDERATION

CERTIFICATE OF COUNSEL

CERTIFICATE OF SERVICE

BRYAN W. NICOLLE-WAGNER
1250 Oakcrest Circle
Corona, California 91720

Appellant/Plaintiff/Taxpayer
Pro Se

MOTION FOR RECONSIDERATION

Taxpayers-Appellants request the court reconsider the position it has taken on all federal questions presented in taxpayers-appellants' brief. Taxpayers-appellants have not received the written opinion on this matter since it was inadvertently sent to taxpayer-appellants' old address. However, the clerk of the court did



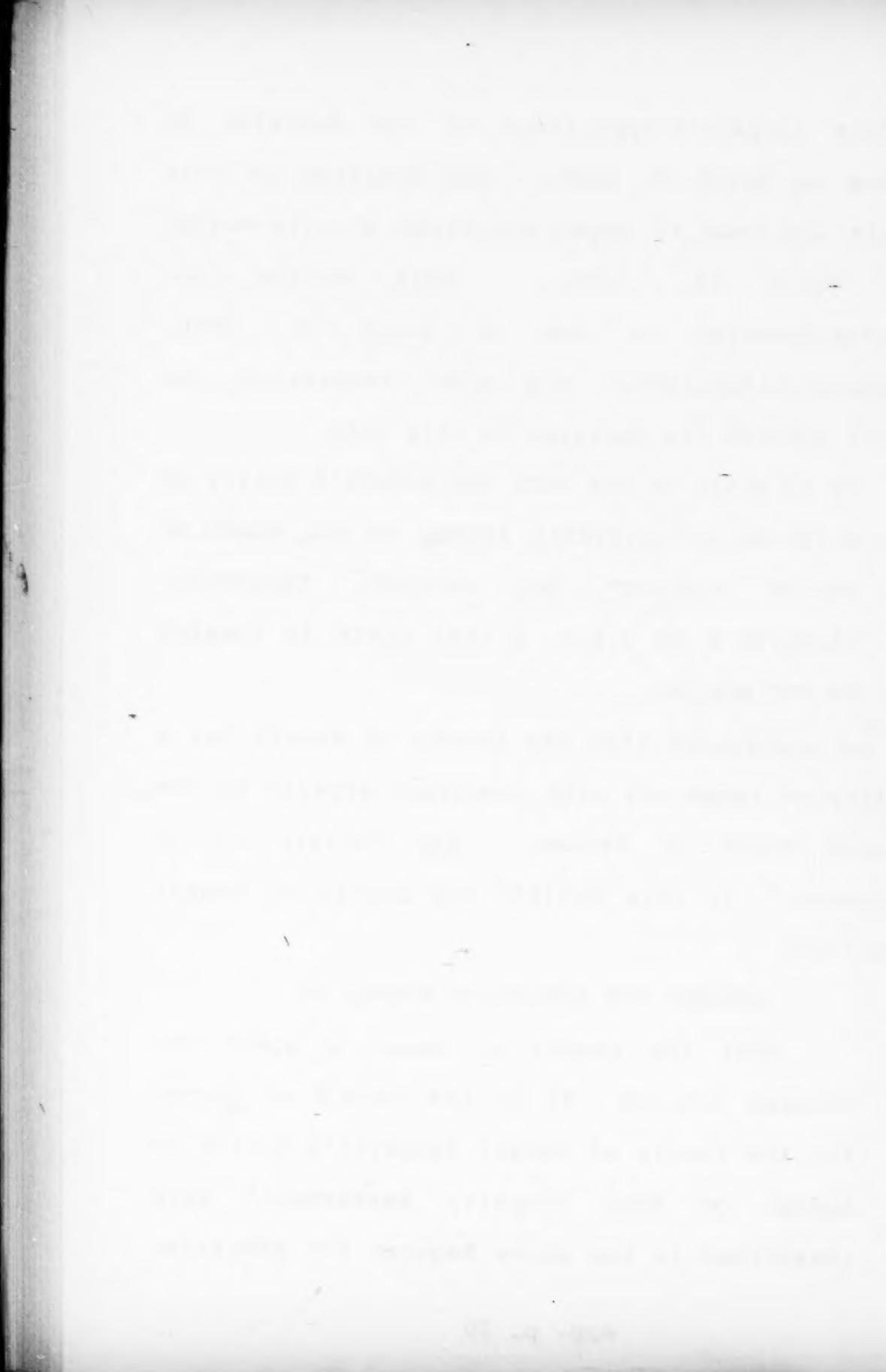
inform taxpayers-appellants of the decision by phone on March 9, 1990. The decision of this Court was read to appellant Bryan Nicolle-Wagner on March 11, 1990. This Motion for Reconsideration is due on March 13, 1990. Taxpayers-appellants' are also requesting the court publish its decision in this case.

IT IS PLAIN ON ITS FACE THE COUNTY'S POLICY OF ALTERING A TAXPAYER'S APPEAL TO THE BOARD OF REVIEW VIOLATES DUE PROCESS; THEREFORE, TAXPAYER'S 42 U.S.C. § 1983 CLAIM IS CORRECT ON THE MERITS.

It is undisputed that the County of Hawaii has a policy of tampering with taxpayers appeals to the County Board of Review. See Exhibit 12 in evidence. In this exhibit the County of Hawaii admitted:

REQUEST FOR ADMISSION NUMBER 10

That the County of Hawaii's agent who crossed out the '87 in the "Board of Review for the County of Hawaii Taxpayer's Notice of Appeal on Real Property Assessment" form (described in the above Request for Admission



Number 9, was following the County of Hawaii policy when he crossed out the '87. See Exhibit 12 in evidence (emphasis added).

A county policy which condones tampering with a taxpayers appeal resulting in the elimination of 2 of the 3 tax years being appealed is, on its face, a violation of due process.

This Court has erred in upholding such an unconstitutional policy and should therefore reverse itself. The only evidence the County Board of Review receives is often written material sent to it by the taxpayers. Taxpayers, such as appellants, often don't even appear at these hearings. Therefore, it is critical that the County Board of review receive untampered with appeals if it is to carry out its function.

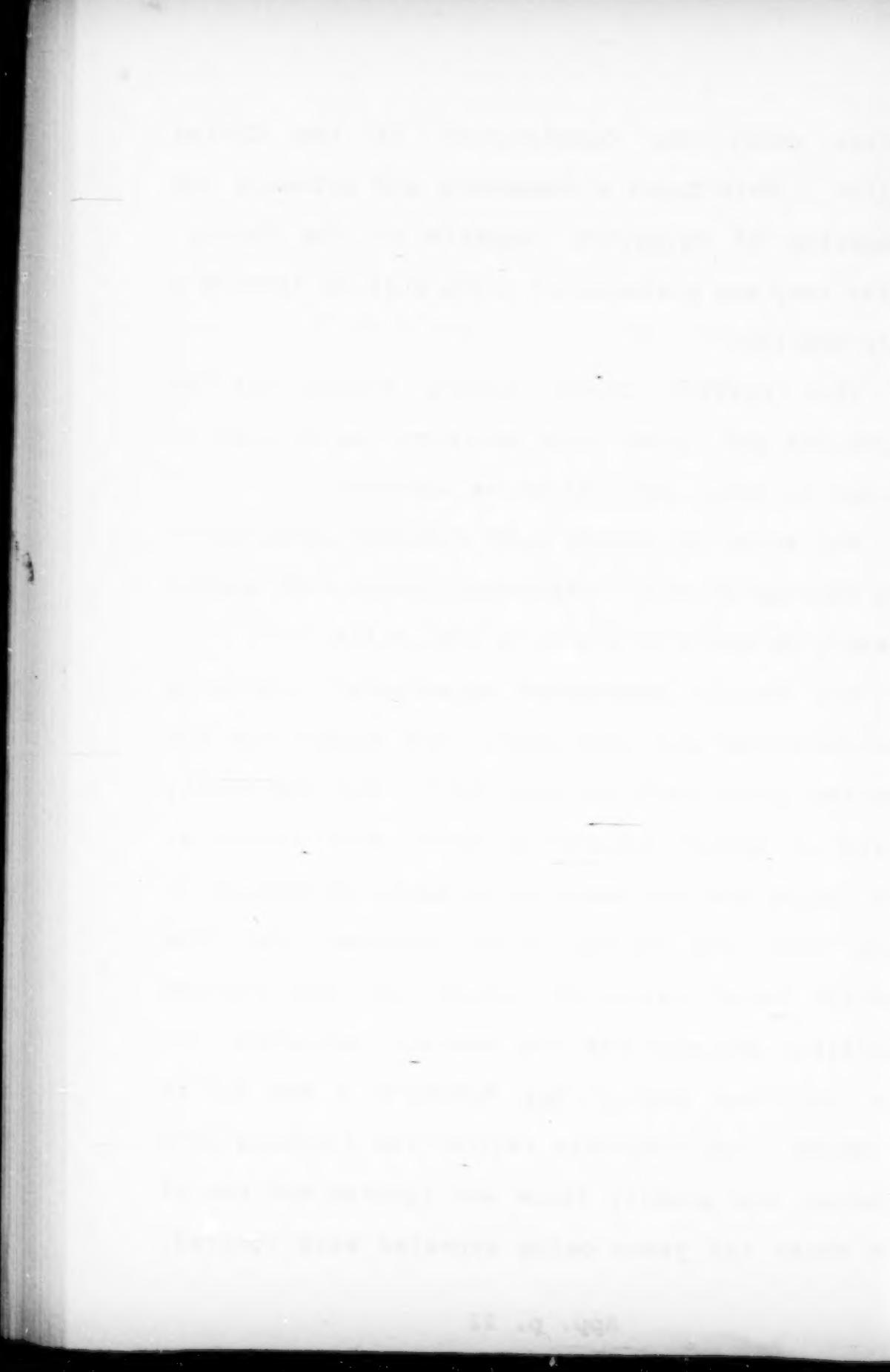
This Court has acknowledged that "for some reason" the County of Hawaii, acting as an adverse party, crossed out part of appellants appeal to the Board of Review. Taxpayers have little protection against such tampering because their appeals go through the County Real Property Tax Division. The protection that taxpayers have

arises under the Constitution of the United States. This Court's condoning and allowing the tampering of taxpayers' appeals by the County, takes away any pretense of being able to receive a fair hearing.

This current County policy should not be sustained and, under this decision, be allowed to spread to other administrative agencies.

THE BOARD OF REVIEW ALSO VIOLATED APPELLANTS' DUE PROCESS RIGHTS. THEREFORE, APPELLANTS SHOULD PREVAIL ON THEIR 42 U.S.C. § 1983 CLAIM

The County reassessed appellants' residence for 1985-1986 and 1986-1987. The appeal was for the tax years 1985 through 1987. Yet the County Board of Review apparently never even looked at the issues and the years being appealed because it made only one ruling which affirmed that the \$46,820 total valuation (which was the 1985-86 appraisal amount) was the correct valuation for the 1987 tax year. See Exhibits 2 and 17 in evidence. The taxpayers request for findings were ignored, the penalty issue was ignored and two of the three tax years being appealed were ignored.



Thus, far from curing any due process violations committed by the Hawaii tax appraiser, the Tax Review Board added additional due process violations in its mockery of a fair hearing.

THIS COURT SHOULD PUBLISH ITS OPINION

This Court should explain the parameters and limits of its condoning county officials tampering with citizens appeals "for some reason". The Court should inform other Hawaii attorneys of its radical departure from basic due process requirements that the County give parties the opportunity to present their appeal and be heard (without the County's altering or tampering with appeal documents) at taxpayer administrative hearings.

The citizens of the State of Hawaii have a right to know what type of justice and proceedings are being administered by the County and condoned by this Court.

Respectfully submitted,

BRYAN W. NICOLLE-WAGNER

Dated: Corona, California, May 11, 1990



CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregoing MOTION FOR RECONSIDERATION is presented in good faith and not for purposes of delay.

Dated: May 11, 1990

BRYAN W. NICOLLE-WAGNER
Taxpayer/Appellant Pro Se



BRYAN W. NICOLLE-WAGNER
RACHELLE J. NICOLLE-WAGNER
24 Sunfish
Irvine, California 92714

Tel. No. (714) 957-4548

Appellants

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of) Case No. 2529
the Tax Appeal)
of) FIRST AMENDED APPEAL;
) EXHIBIT 10; CERTIFICATE
) OF SERVICE
BRYAN W. NICOLLE-)
WAGNER and RACHELLE) [Filed November 30, 1987]
J. NICOLLE-WAGNER)
Appellants.)

FIRST AMENDED APPEAL

Pursuant to Section 232-16 of the Hawaii Revised Statutes, the Appellants herein amend their appeal in regards to TMK: 1-4-032-040, which has a total valuation placed on it by the assessor of \$46,820 for the '85-'86 tax year and a total valuation of \$46,576 placed on it for the '86-'87 tax year. The appeal in the above entitled matter is herein amended as follows:



I.

The appeal by the Appellants in the above entitled matter is herein incorporated by reference (previously filed).

II.

SIXTH GROUNDS FOR APPEAL

Once Appellants appeal to the County Board of Review was with the County Tax Assessor's Office in accordance with Section 232-15 of the Hawaii Revised Statutes, an agent in the County Tax Assessor's Office tampered with Appellants appeal, by crossing out on the appeal all but the 1985 tax year that Appellants were appealing.

Appellants object to this tampering of Appellants appeal and specifically requested that the Board of Review consider the appeal for the crossed out 1986-1987 tax year and also address the other issues raised on Appellant's appeal, addendum to appeal, memorandum in support of appeal and request for conclusions of law.

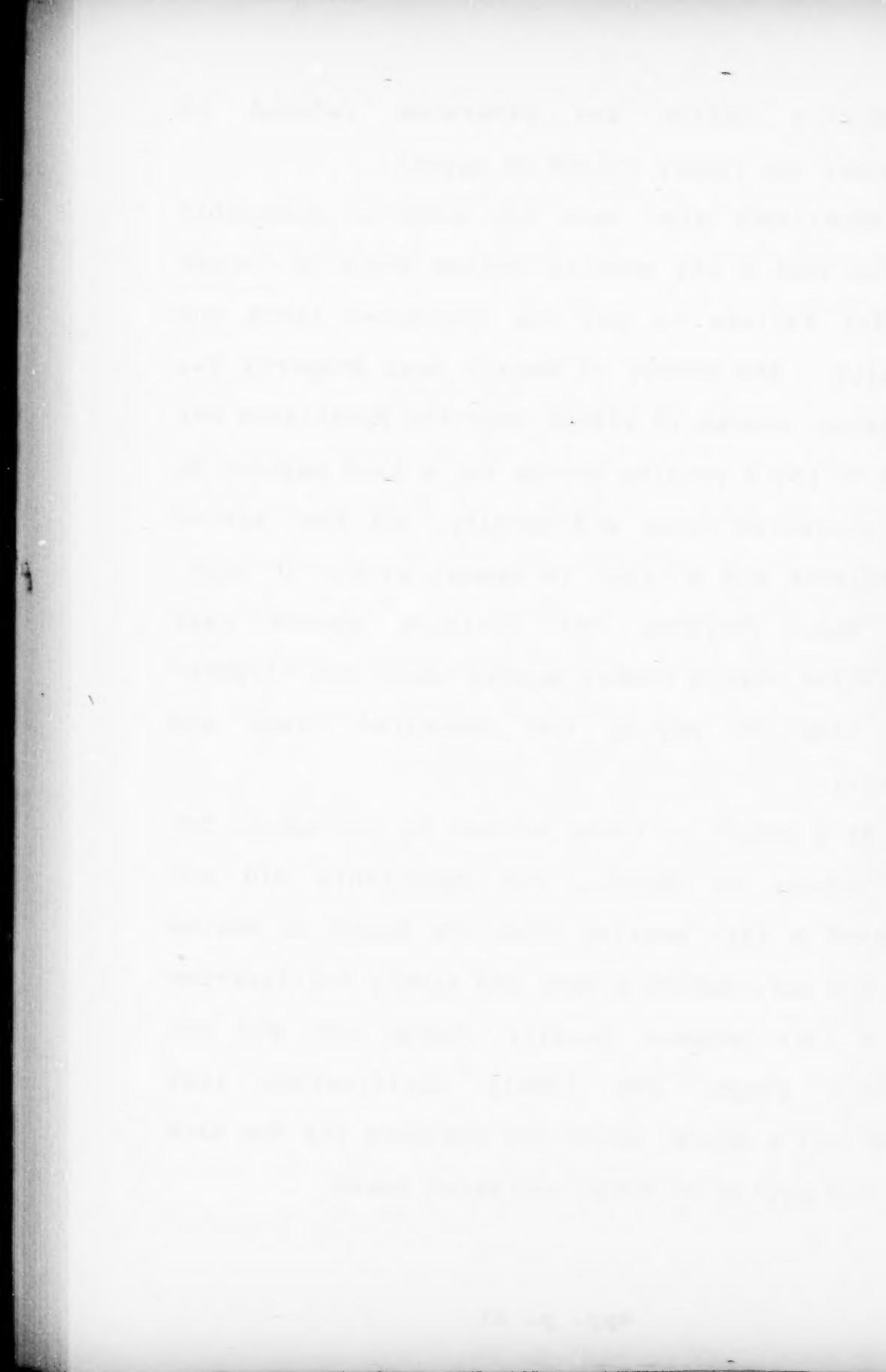
Despite these objections, the Board of Review refused to make a determination on the 1986-1987 tax year that was crossed out by the County Tax



Assessor's Office and otherwise refused to consider the issues raised on appeal.

Appellants also were not given a reasonable notice that a 10% penalty charge would be tacked on for failure to pay the contested taxes and penalty. The County of Hawaii Real Property Tax Division, stated in effect that the Appellants may have to pay a penalty charge for a late payment on the contested taxes and penalty, but then stated Appellants had a right to appeal within 30 days. The Real Property Tax Division should have clarified that a timely appeal would not "freeze" the time of paying the contested taxes and penalty.

As a result of these actions by the agents for the County of Hawaii, the Appellants did not receive a fair hearing from the Board of Review and did not receive proper and timely notification of a late payment penalty charge and did not receive proper and timely notification that Appellant's appeal would not postpone the due date for the paying of these contested taxes.



These actions of the County of Hawaii, through its agents, violated Appellants due process rights under the due process clause of the United States Constitution.

Since Appellants paid the contested amounts that the Tax Assessor's Office stated Appellants owed (see Exhibit 10 attached hereto), Appellants are requesting positive injunctive relief from the Court in the form of a return of the excess real property tax money and penalties paid to the County of Hawaii. Appellants are requesting this relief under 42 U.S.C., Section 1983.

Appellants are also claiming under 42 U.S.C., Section 1983, that the County of Hawaii is liable for the United States Constitution due process violations springing from the County's agents actions which deprived appellants of a fair hearing. The Appellants request for relief by having the court monitor the actions of the Board of Review to the extent necessary to insure that out of State Appellants receive a fair hearing before the Board of Review.



Appellants also request that the County of Hawaii be required to give reasonable notice that a timely appeal to the Board of Review will not extend the date for the payment of the contested taxes.

Lastly, Appellants request that the County of Hawaii be required to give a reasonable notice that there is a possibility of a 10% late penalty charge for failing to pay the contested taxes, within the time frame specified by the County of Hawaii.

III.

Wherefore, in addition to the relief prayed for in Appellants appeal and the relief requested under 42 U.S.C., Section 1983, Appellants also pray for attorney's fees and costs pursuant to 42 U.S.C., Section 1988 and any other applicable law.
Dated: Irvine, California, this 27th day of November 1987.

BRYAN W. NICOLLE-WAGNER

RACHELLE J. NICOLLE-WAGNER
Appellant



BRYAN W. NICOLLE-WAGNER
RACHELLE J. NICOLLE-WAGNER
24 Sunfish
Irvine, California 92714

Tel. No. (714) 957-4548

Appellants

IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of) Case No. 2529
the Tax Appeal)
of) SECOND AMENDED APPEAL;
BRYAN W. NICOLLE-) CERTIFICATE OF SERVICE
WAGNER and RACHELLE)
J. NICOLLE-WAGNER)
Appellants.) [Dated February 15, 1988]
)

SECOND AMENDED APPEAL

Pursuant to Section 232-16 of the Hawaii Revised Statutes, the Appellants herein amend their First Amended Appeal in regards to TMK: 1-4-032-040, which has a total valuation placed on it by the assessor of \$46,820 for the '85-'86 tax year and a total valuation of \$46,576 placed on it for the '86-'87 tax year. The First Amended Appeal in the above entitled matter is herein amended as follows:

I.

The First Amended Appeal of the Appellants in the above entitled matter is herein incorporated by reference (previously filed).

II.

SIXTH GROUNDS FOR APPEAL

The Sixth Grounds for Appeal contained in the First Amended Appeal is hereby added to as follows:

These actions of the County of Hawaii, which violated Appellants due process rights under the United States Constitution, were done under color of state law.

III.

SEVENTH GROUNDS FOR APPEAL

The County of Hawaii, through its agents at the County Real Property Tax Division, made a reassessment on Appellants real property TMK: 1-4-032-040 for the 1987-1988 tax year. In this reassessment, the County of Hawaii denied Appellants home exemption on the property. The County placed a valuation on the property of \$46,880. Appellants contend the property's fair



market value for the 1987-1988 tax year is \$36,000.

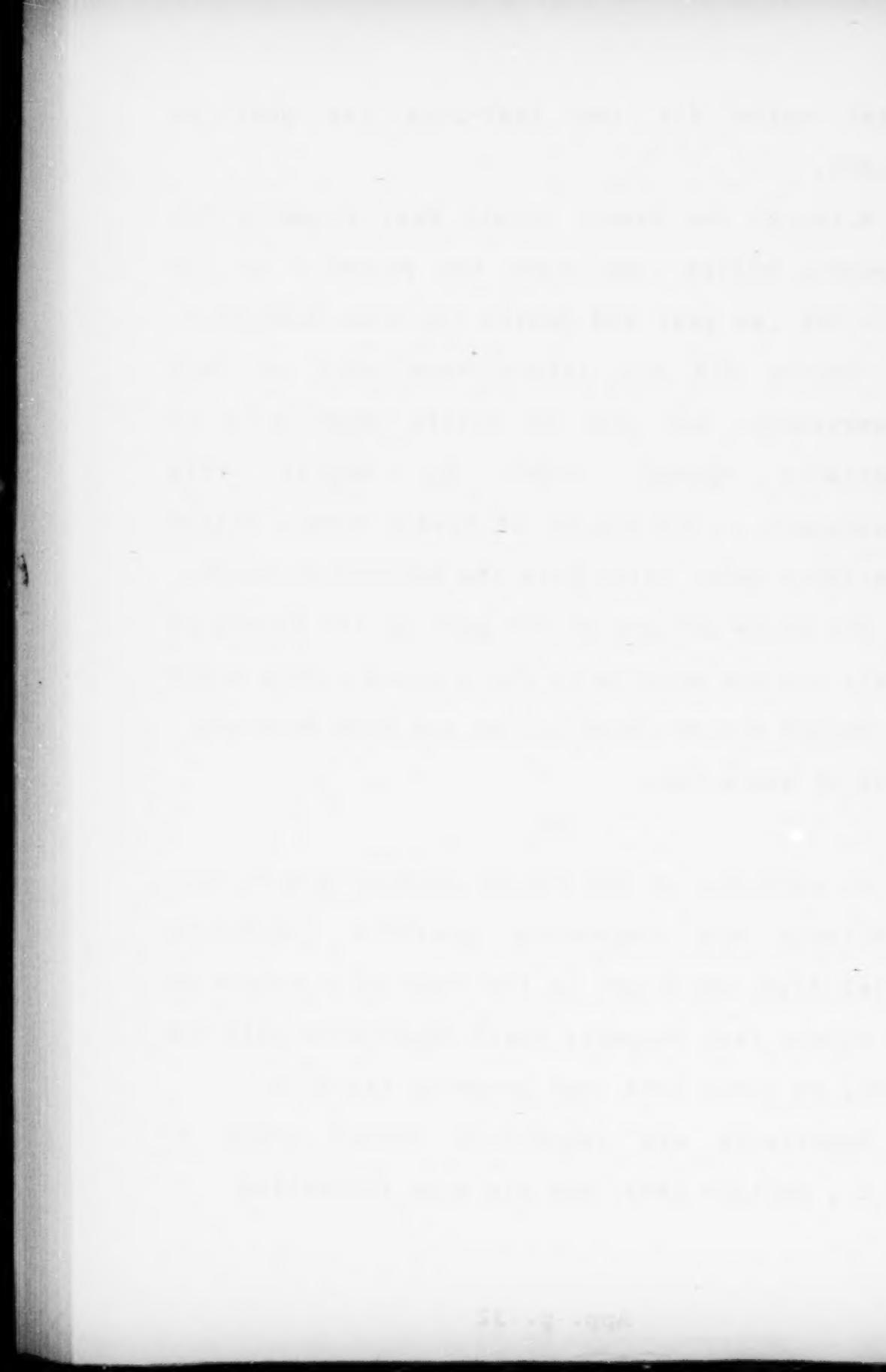
Although the Hawaii County Real Property Tax Assessors Office reassessed the property in the 1987-1988 tax year and denied the home exemption, the County did not inform Appellants of this reassessment, nor did it notify Appellants of Appellants Appeal right to appeal this reassessment. The County of Hawaii simply billed Appellants bank, which paid the additional taxes.

The above actions on the part of the County of Hawaii violate Appellants due process rights under the United States Constitution and were done under color of state law.

IV.

In addition to the relief already prayed for, Appellants are requesting positive injunctive relief from the Court in the form of a return of the excess real property taxes Appellants paid the County on their 1987 real property tax bill.

Appellants are requesting relief under 42 U.S.C., Section 1983, and are also requesting



attorney fees and costs under 42 U.S.C., Section

1988.

Dated: Irvine, California, this 15th day of
February, 1988.

BRYAN W. NICOLLE-WAGNER
Appellant

RACHELLE J. NICOLLE-WAGNER
Appellant



[EXHIBIT 2 IN EVIDENCE
page 1 of 6 pages)]

COUNTY OF HAWAII
REAL PROPERTY TAX DIVISION
DEPARTMENT OF FINANCE

865 PILANI STREET
HILO, HAWAII 96720

YEAR	Z	S	PLAT	PARCEL	HPR	TEN. NO.
1985-86	1	4	032	040	0000	000

LAND CLASS: AGR. LAND AREA: 81030

CODE: 5 NET INCREASE: 270.00

AMENDED NOTICE OF PROPERTY ASSESSMENT

(This notice cancels all previous assessments.)

ASSESSED VALUATION

ORIG Bldg.

Valuation	Exemption	Net Taxable	Tax Rate	Taxes
42,293-	20,000	22,203	850	188.73



[EXHIBIT 2 IN EVIDENCE
page 2 of 6 pages)]

ORIG Land

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
4,617		4,617	1000	46.17

ORIG TOTAL

46,820	20,000	26,820		234.90
--------	--------	--------	--	--------

AMENDED Bldg.

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
42,293		42,203	850	358.73

AMENDED Land

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
4,617		4,617	1000	46.17

AMENDED TOTAL

46,820		46,820		404.90
--------	--	--------	--	--------



[EXHIBIT 2 IN EVIDENCE

page 3 of 6 pages)]

Addressee: Nicolle-Wagner Bryan W/R
24 Sunfish
Irvine, CA 92714

Owner: Nicolle-Wagner Bryan W/R

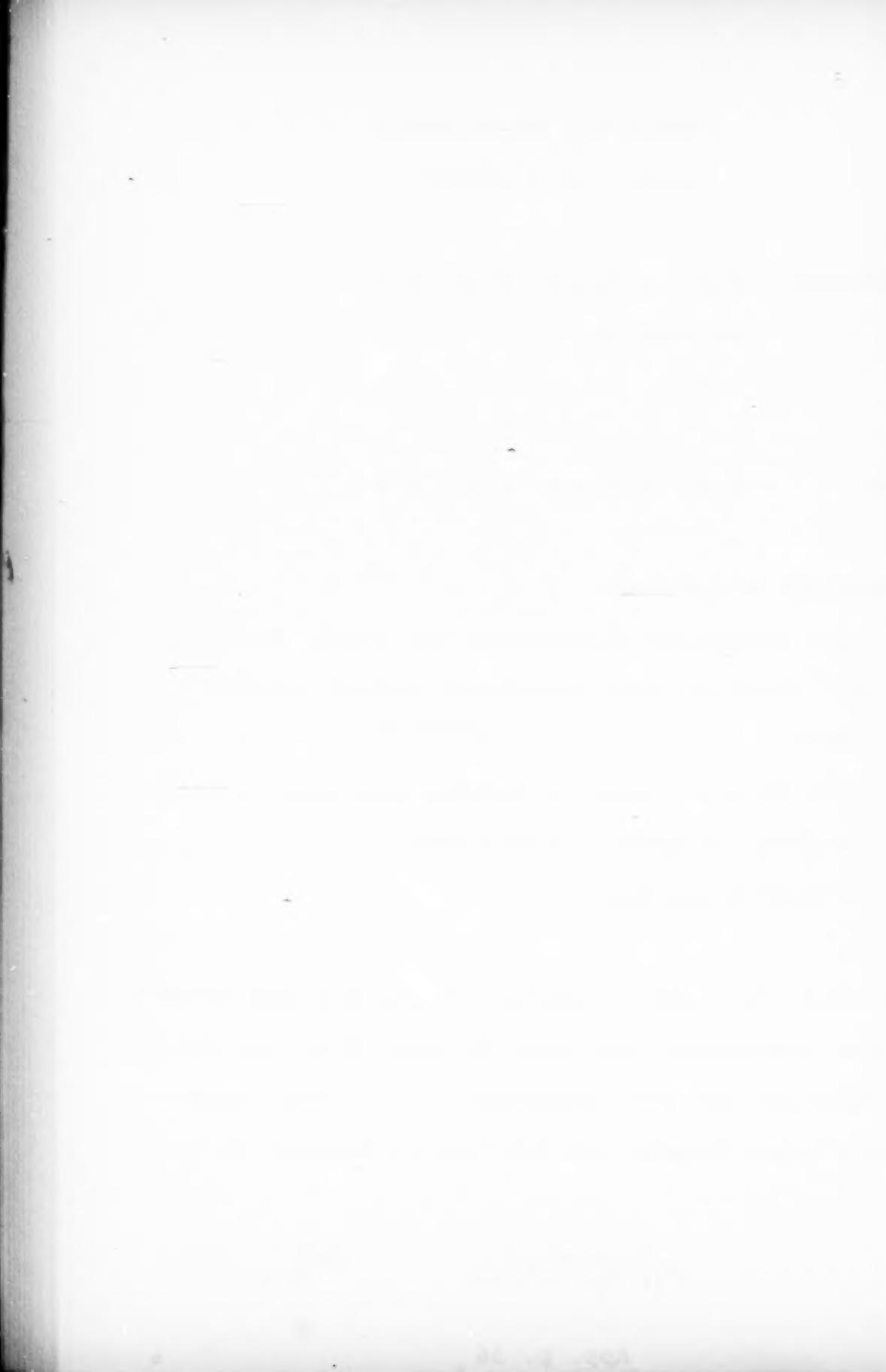
REASON FOR ADJUSTMENT:

1. Home exemption disallowed for 1985; dwelling not used as main residence and/or rented in 1985.
2. \$100.00 civil penalty imposed pursuant to Sec. 19-68(d)(2) Hawaii County Code.
3. \$270.00 taxes due.

You have the right to appeal if you are aggrieved by the assessment and have 30 days from the date of mailing of the assessment . . . see Hawaii County Code, Chapter 19, Article 3, Section 19-33.

[signature]
For Tax Office

[May 7, 1987]
Date



[EXHIBIT 2 IN EVIDENCE
page 4 of 6 pages)]

COUNTY OF HAWAII
REAL PROPERTY TAX DIVISION
DEPARTMENT OF FINANCE

865 PILANI STREET
HILO, HAWAII 96720

YEAR	Z	S	PLAT	PARCEL	HPR	TEN. NO.
1986-87	1	4	032	040	0000	000

LAND CLASS: AGR. LAND AREA: 81030

CODE: 5 NET INCREASE: 170.00

AMENDED NOTICE OF PROPERTY ASSESSMENT

(This notice cancels all previous assessments.)

ASSESSED VALUATION

ORIG Bldg.

Valuation	Exemption	Net Taxable	Tax Rate	Taxes
42,513	20,000	22,513	850	191.36



[EXHIBIT 2 IN EVIDENCE
page 5 of 6 pages)]

ORIG Land

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
4,063		4,063	1000	40.63

ORIG TOTAL

46,576	20,000	26,576		231.99
--------	--------	--------	--	--------

AMENDED Bldg.

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
42,513		42,513	850	361.36

AMENDED Land

<u>Valuation</u>	<u>Exemption</u>	<u>Net Taxable</u>	<u>Tax Rate</u>	<u>Taxes</u>
4,063		4,063	1000	40.63

AMENDED TOTAL

46,576		46,576		401.99
--------	--	--------	--	--------



[EXHIBIT 2 IN EVIDENCE
page 6 of 6 pages)]

Addressee: Nicolle-Wagner Bryan W/R
24 Sunfish
Irvine, CA 92714

Owner: Nicolle-Wagner Bryan W/R

REASON FOR ADJUSTMENT:

1. Pursuant to Sec. 19-68(b)(1), homeowner's exemption disallowed for 1986; dwelling not used as main residence and/or rented in 1986.
2. \$170.00 taxes due.

You have the right to appeal if you are aggrieved by the assessment and have 30 days from the date of mailing of the assessment . . . see Hawaii County Code, Chapter 19, Article 3, Section 19-33.

[signature]
For Tax Office

[May 7, 1987]
Date



[EXHIBIT 3 IN EVIDENCE
page 1 of 3 pages]

BOARD OF REVIEW FOR THE COUNTY OF HAWAII
TAXPREPARER'S NOTICE OF APPEAL
ON REAL PROPERTY ASSESSMENT

"The costs to be deposited by the taxpayer on appeal to the board of review shall be \$3 for each real property tax appeal" Chapter 19, Article 12 Section 19-91

Zone	Sec.	Plat	Par.	HPR
1	4	32	40	000

General Land Class: AGR

Appeal Cost deposit of \$3.00

Notice is hereby given that Bryan & Rachelle Nicolle-Wagner whose mailing address is 24 Sunfish, Irvine, CA 92714 hereby appeals the assessment made for the purpose of real property taxation for the year 1985 [originally read "1985-87" but the "87" was crossed off and initialled by the county's agent] upon real property identified on the maps and records by the above tax key.

The appeal is from the Assessment as made on the:



[EXHIBIT 3 IN EVIDENCE

page 2 of 3 pages]

X Building X Land X Other

Taxpayers opinion of assessed value:

BLDG.: 30,937

LAND: 4,063

EX. 1,000*

TOTAL: 36,000

*water tank

Grounds of objection to the assessment are as follows:

- X The assessed value of the property exceeds by more than 20 percent the ratio of assessment to market value. (The property is over-assessed by more than 20 percent).
- X There is inequality or lack of uniformity resulting from the use of illegal assessment

[EXHIBIT 3 IN EVIDENCE

page 3 of 3 pages]

methods or an error in the application of the methods.

X The assessment methods used were illegal or unconstitutional. [\$100 fine illegal since rental notice turned into your office in 1984.

Remarks: House was listed for sale at \$36,000. From Feb. till the end of May 1987. No offers to buy were received. At the end of May the water tank collapsed and it took \$1,000 to replace it. So the price was raised to \$37,000. There still have been no offers on it indicating that this may be above Market Value.

Dated: 6/2/87

[signature]

For Real Property
Tax Administrator

Signed: Rachelle Nicolle-Wagner

Telephone (714) 857-4548
Business N/A

[EXHIBIT 9 IN EVIDENCE]

Bryan and Rachelle Nicolle-Wagner
24 Sunfish
Irvine, CA 92714

Addendum to Appeal

Re: Zone 1, Sec. 4, Plat 32, Par 40, HPR 000

We sent in our appeal for the Amended Notice of Property Assessment for the 1985-1986 and 1986-1987 years. We are also appealing, if it is not too soon, the 1987-1988 property tax assessment (see Taxpayer's Notice of Appeal on Real Property Assessment, dated 6/287).

We were surprised to learn that Mr. Gary D. Menino's initials are on our appeal. It appears he crossed out our appeal for the 1986-1987 and 1987-1988 tax years. We wish our appeal to remain as we wrote it, we did not authorize Mr. Menino to unilaterally alter our appeal form.

It is our position that: (1) an appraiser, such as Gary D. Menino, does not have the legal



authority to unilaterally alter appeals. It is the responsibility and duty of the Administrative Law Judge to determine the legal sufficiency of an appeal and make a determination thereon, (2) an alteration in the appeals document by an Agent of an Administrative Agency adverse to the position of the Appellant is a violation of Due Process, and (3) the Taxpayer's Notice of Appeal on Real Property Assessment was filled out on the County of Hawaii's Appeals form, form R P Form p-51 (3/86). Neither the appeals form nor Mr. Kurokawa (Asst. County Real Property Tax Administrator) stated we needed to file a separate appeal for each year (see Exhibit 1, attached and incorporated herein by reference). If we need to file a separate appeal for each year were will; however, we should be informed of this requirement.

Mr. Menino, the Appraiser, feels this property is worth \$46,576 (see Amended Notice of Property Assessment for th 1986-1987 year). I am therefore making this document not only an



Addendum to Appeal but an Offer for Sale. We offer to sell to Mr. Gary D. Menino our house and property located in the County of Hawaii, Zone 1. Sec. 4 Plat 32, Par 40, HPR 000 for \$36,000 in cash or certified check. We offer to sell the property "as is" under a Warranty Deed for 30 days from the date of this document and provided that no other offer has been accepted.

The \$46,576 that Mr. Menino states this property is worth is a gross overestimation of its value. If Mr. Menino is correct, he has the opportunity of reaping a profit of \$10,576.

Dated: 7-18-87

Bryan W. Nicolle-Wagner

Rachelle Joye Nicolle-Wagner



[EXHIBIT 12 IN EVIDENCE]

JOHN A. WAGNER 2877
Corporation Counsel

GERALD TAKASE 3260
Deputy Corporation Counsel
County of Hawaii
The Hilo Lagoon Centre
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Tel. No. 961-8251

Attorneys for Appellee County of Hawaii

IN THE TAX APPEAL COURT

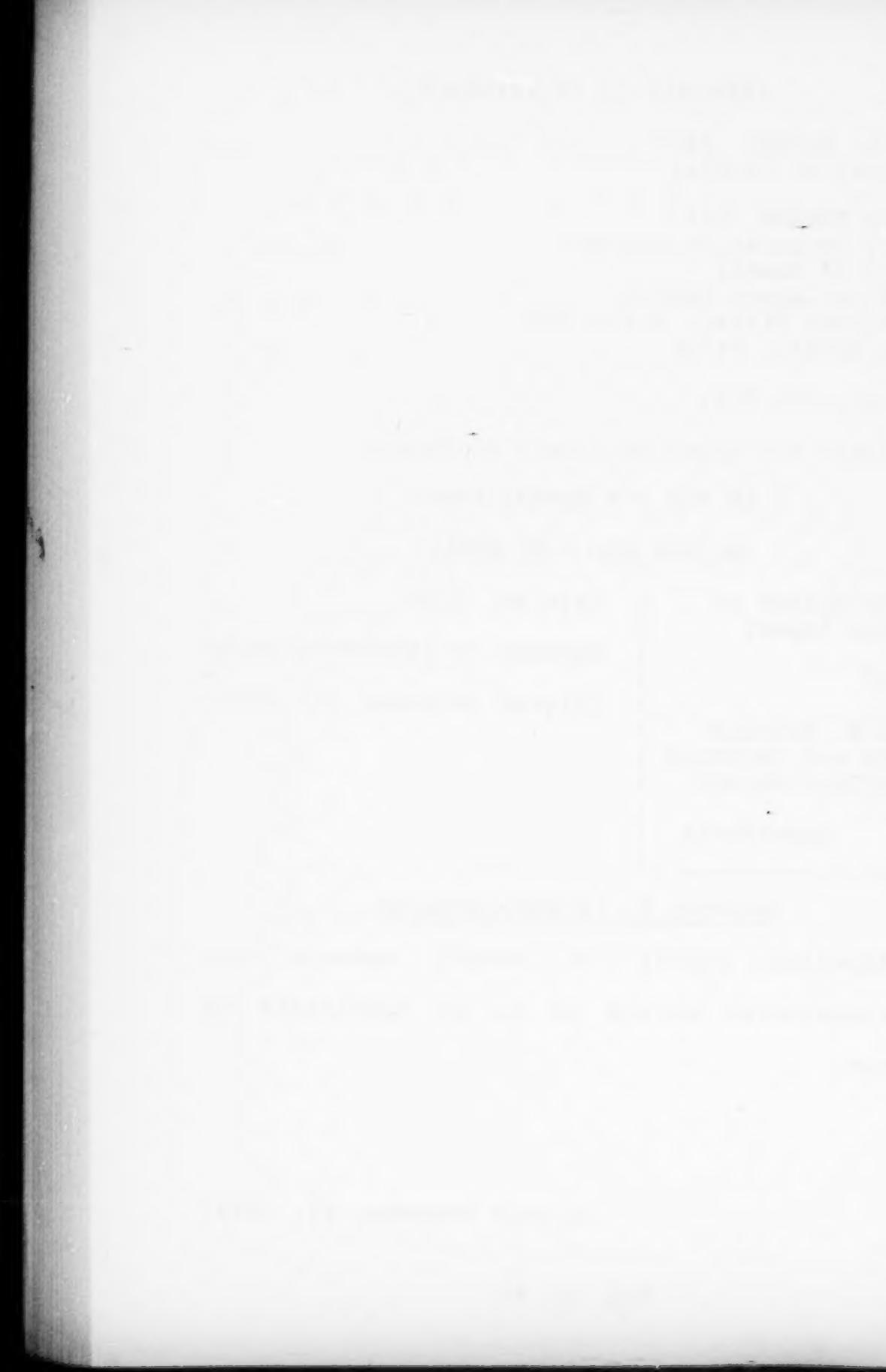
OF THE STATE OF HAWAII

In the Matter of) Case No. 2529
the Tax Appeal)
of) ANSWERS TO INTERROGATORIES
) [Signed December 23, 1987]
BRYAN W. NICOLLE-)
WAGNER and RACHELLE)
J. NICOLLE-WAGNER)
)
Appellants.)
)

ANSWERS TO INTERROGATORIES

Appellee County of Hawaii answers the
interrogatories served on it by Appellants as
follows:

[Signed December 23, 1987]



REQUEST FOR ADMISSION NUMBER 9

That an agent, for the County of Hawaii, in the Department of Finance, crossed out the '87 in the, "Board of Review for the County of Hawaii Taxpayer's Notice of Appeal on Real Property Assessment," (that document attached as Exhibit 4 to the appeal in the above entitled matter).

Admit.

REQUEST FOR ADMISSION NUMBER 10

That the County of Hawaii agent who crossed out the '87 in the "Board of Review for the County of Hawaii Taxpayer's Notice of Appeal on Real Property Assessment" form (described in the above Request for Admission Number 9), was following the County of Hawaii policy when he crossed out the '87.

Admit.

INTERROGATORY NUMBER 15

If the above Request for Admission Number 10 is not admitted, explain what the Hawaii County policy is in regards to an agent for the County of Hawaii altering a Taxpayer's Notice of Appeal



on Real Property Assessment form in the manner described in Request for Admission Number 9.

N/A

[nonrelevant portion omitted]

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

GERALD TAKASE, being first duly sworn on oath, deposes and says: That he is the attorney for appellee County of Hawaii in the above-entitled action; that he has read the foregoing answers to interrogatories, knows the contents thereof, and that the same are true to the best of his knowledge and belief.

GERALD TAKASE
Deputy Corporation Counsel
County of Hawaii

Subscribed and sworn
to before me this
23rd day of December, 1987.

[signature]
Notary Public, State of Hawaii

My commission expires: 10/3/91.



[EXHIBIT 16 IN EVIDENCE]

Bryan and Rachelle Nicolle-Wagner
24 Sunfish
Irvine, CA 92714

Re: Tax Map Key 1-4-32-40
Hearing Date: August 19, 1987

REQUEST FOR CONCLUSIONS OF LAW

We request, pursuant to Section 232-15, Vol. 4, of the Hawaii Revised Statutes, that the board of review make the following conclusions of law:

- (1) Whether or not Section 19-91 of the Hawaii County Code bars an appellant from raising, in his general appeal under Section 232-15 of the Hawaii Revised Statutes, some or all issues in dispute on a reassessment made after April 9th of the preceding tax year.

- (2) If the above question is answered affirmatively, is the Hawaii County code, Section 19-91 in conflict with the general appeal rights and intent of the State

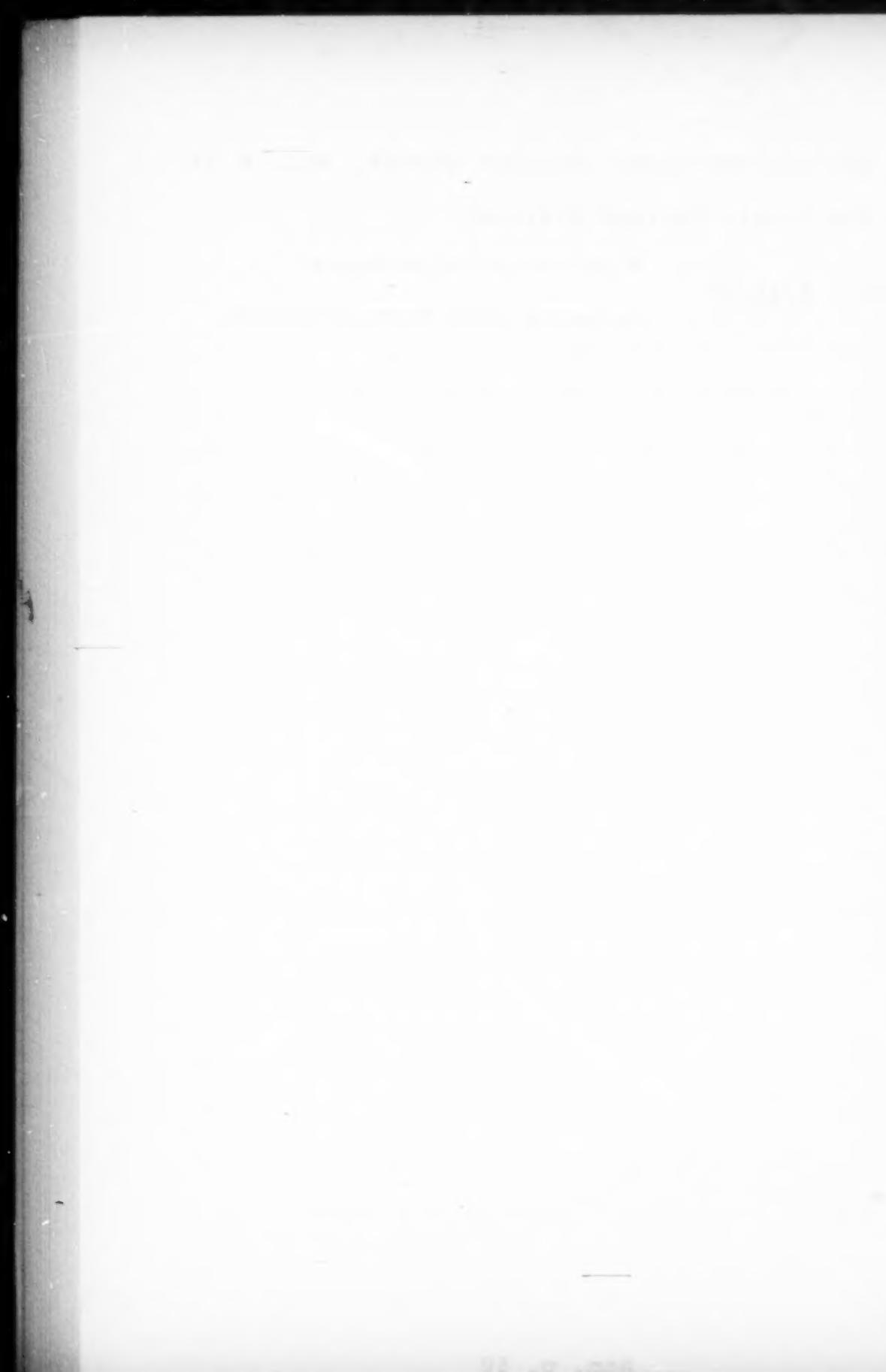


Legislature under Section 232-15, Vol. 4 of
the Hawaii Revised Statutes.

Dated: 8/10/87

Bryan W. Nicolle-Wagner

Rachelle Joye Nicolle-Wagner



UNITED STATES CONSTITUTION

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the



Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified



and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-83, 1985, 1986], Title IX of Public Law 92-318 [20 USCS §§1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 USCS 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

HAWAII REVISED STATUTES §232-3.

In the case of a real property tax appeal, no taxpayer or county shall be deemed aggrieved by

an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown:

(1) Assessment of the property exceeds by more than twenty per cent the ratio of assessment to market value used by the director of taxation as the real property tax base, or

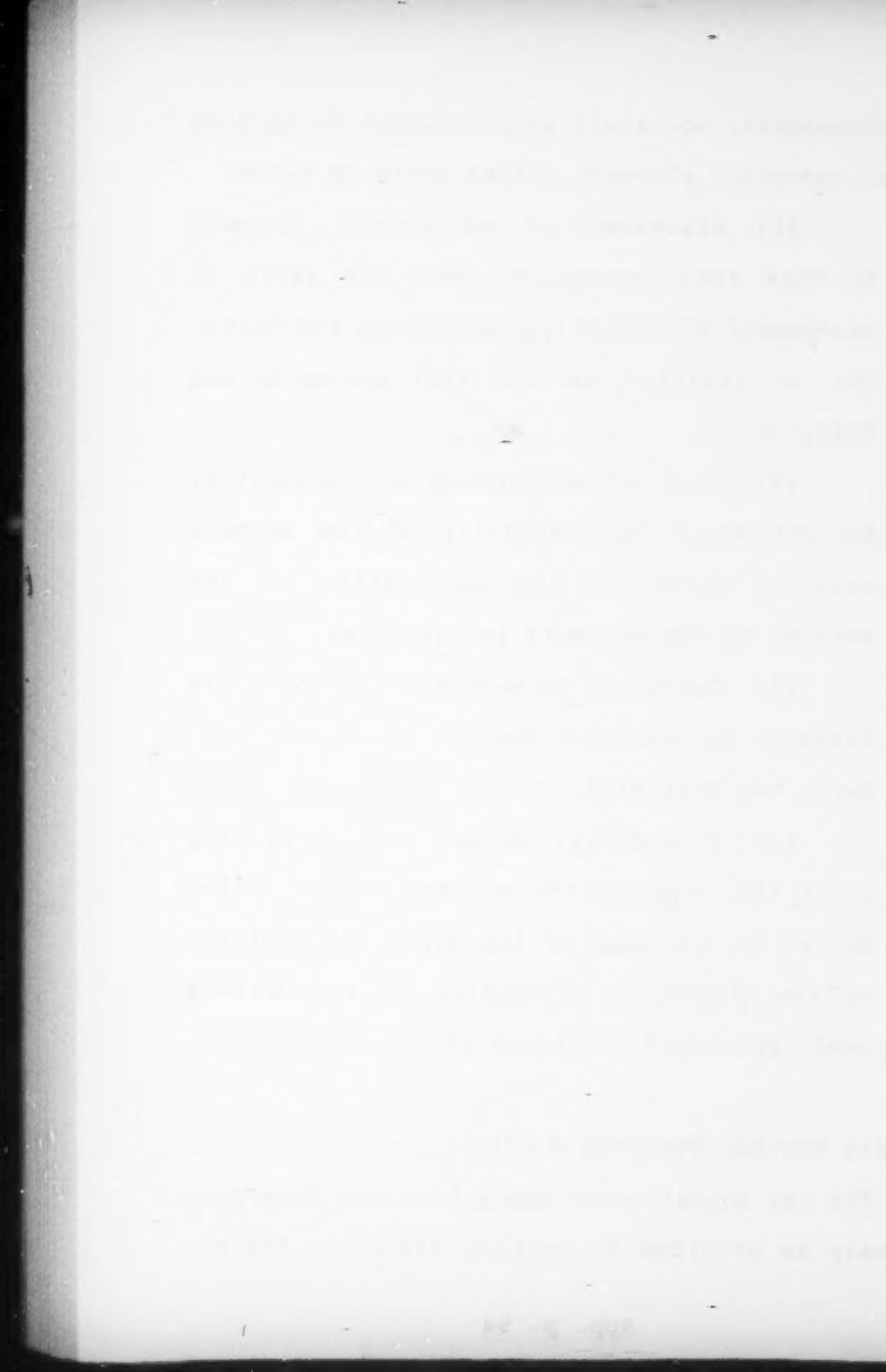
(2) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or

(3) Denial of an exemption to which the taxpayer is entitled and for which the taxpayer has qualified, or

(4) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State (in addition to the ground of illegality of the methods used, mentioned in clause (2)).

HAWAII REVISED STATUTES § 232-11

The tax appeal court shall hear and determine appeals as provided in section 232-16 or 232-17.



It shall be a court of record; have jurisdiction throughout the State with respect to matters within its jurisdiction; and shall have the power and authority in the manner provided in section 232-13, to decide all questions of fact and all questions of law, including constitutional questions, involved in any such matters, without the intervention of a jury. The court may meet at such times during the year and at such places from time to time as shall be deemed advisable to carry out its work. The court, with the approval of the supreme court, shall adopt and use, and with such approval may change from time to time, an official seal.

HAWAII REVISED STATUTES § 232-12

The tax appeal court when hearing appeals, shall, in respect to the summoning and examination of witnesses and the production of papers and documents and punishment for contempts and otherwise carrying out its duties and functions, have all the powers and authority of a circuit court.

HAWAII REVISED STATUTES § 232-13

The hearing before the tax appeal court shall be a hearing de novo. Irrespective of which party prevails in the board of review the assessment as made by the assessor, or if increased by the board, the assessment as so increased, shall be deemed prima facie correct. Each party shall have the right to introduce, or the tax appeal court, of its own motion, may require the taking of such evidence in relation to the subject pending as in the court's discretion may be deemed property. The court, in the manner provided in section 232-16, shall determine all questions of fact and all questions of law, including constitutional questions, involved in the appeal.

The jurisdiction of the tax appeal court is limited to the amount of valuation or taxes, as the case may be, in dispute as shown on the one hand by the amount of the assessment, or if increased by the board the assessment as so increased.

Upon the application of either the taxpayer, the county or the assessor, the judge of the tax appeal court, upon notice, may allow and direct a bill of particulars of the claim of either the taxpayer, the county, or the assessor to be delivered to the other, and in case of default the judge shall preclude the person so defaulting from giving evidence of the part or parts of the person's affirmative claim of which particulars have not been delivered.

HAWAII REVISED STATUTES §232-17

An appeal shall lie to the tax appeal court from the decision of a board of review by the filing, by the taxpayer, the county, or the tax assessor, of a written notice of appeal in the office of the tax appeal court within thirty days after the filing of the decision of the board of review and, in the case of an appealing taxpayer, the payment of the costs of court in the amount fixed by section 232-22. The taxpayer shall also file a copy of the notice of appeal in the assessor's office and, in case of an appeal from a

12-08-1988

decision involving a county as a party, with the county clerk. If an appeal is taken by a county, a copy of the notice of appeal shall be filed in the assessor's office and a copy shall be served under the taxpayer or taxpayers concerned. A notice of appeal shall be sufficient if it states that the taxpayer, county, or assessors appeals from the decision of the board of review to the tax appeal court and may be amended at any time. The appeal shall bring up for determination all questions of fact and all questions of law, including constitutional questions involved in the appeal.

In case of an appeal by the assessor, a copy of the notice of appeal shall be forthwith delivered or mailed to the taxpayer concerned or to the clerk of the county concerned in the manner provided in section 232-7 for giving notice of decisions.

An appeal shall be deemed to have been taken in time if the notice thereof and costs, if any, and the copy or copies of the notice shall have been deposited in the mail, postage prepaid,

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properly addressed to the tax appeal court, tax assessor, taxpayer or taxpayers, and county respectively, within the period hereinabove provided.

HAWAII REVISED STATUTES § 232-19

Any taxpayer or county aggrieved or the assessor may appeal to the supreme court from the decision of the tax appeal court by filing a written notice of appeal with the tax appeal court and depositing therewith the costs of appeal within thirty days after the filing of the decision. The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, including constitutional questions, involved in the appeal. A notice of appeal may be amended at any time up to the final determination of the tax liability by the last court which an appeal may be taken. The supreme court shall enter a judgment in conformity with its opinion or decision.

All such appeals shall be speedily disposed of and in the hearing and disposition thereof the same shall be given preference over other litigation in the discretion of the court.

HAWAII REVISED STATUTES

[§ 246A-1]. Purpose.

The legislature finds that section 3 of Article VII of the Constitution of the State of Hawaii has been amended to provide that all functions, powers, and duties relating to the taxation of real property heretofore reserved to the State shall be exercised exclusively by the counties with the exception of the County of Kalawao. It is the purpose of this chapter to provide for the orderly transfer of these functions, powers, and duties, including the transfer of personnel, records, and equipment to the counties.

HAWAII COUNTY CODE

Section 19-99. Appeal to board of review.
The notice of appeal of a real property assess-

ment must be lodged with the director on or before the date fixed by law for the taking of the appeal. An appeal to the board of review shall be deemed to have been taken in time if the notice thereof shall have been deposited in the mail, postage prepaid, properly addressed to the director, on or before such date.

The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal, stating the valuation claimed by the taxpayer and the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the taxpayer to the director, the director shall prepare the notice of appeal upon request of the taxpayer or County and any notice so prepared by the director shall be deemed sufficient as to its form.

The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United

States, necessary for the determination of the objections raised by the taxpayer in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the taxpayer in the notice of appeal and in such case the objections may be heard and determined by the tax appeal court on appeal from a decision of the board of review; but this provision shall not be construed to confer upon the board of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the board's decision; provided the amendment does not substantially change the dispute or lower the valuation claimed. (1981, Ord.. No. 6213, sec. 103.)

HAWAII COUNTY CODE

Section 19-91. Appeals. Any taxpayer, who may deem himself aggrieved by an assessment made by the director or by the director's refusal to allow any exemption, may appeal from the assessment or from such refusal to the board of review or the tax appeal court pursuant to section 232-

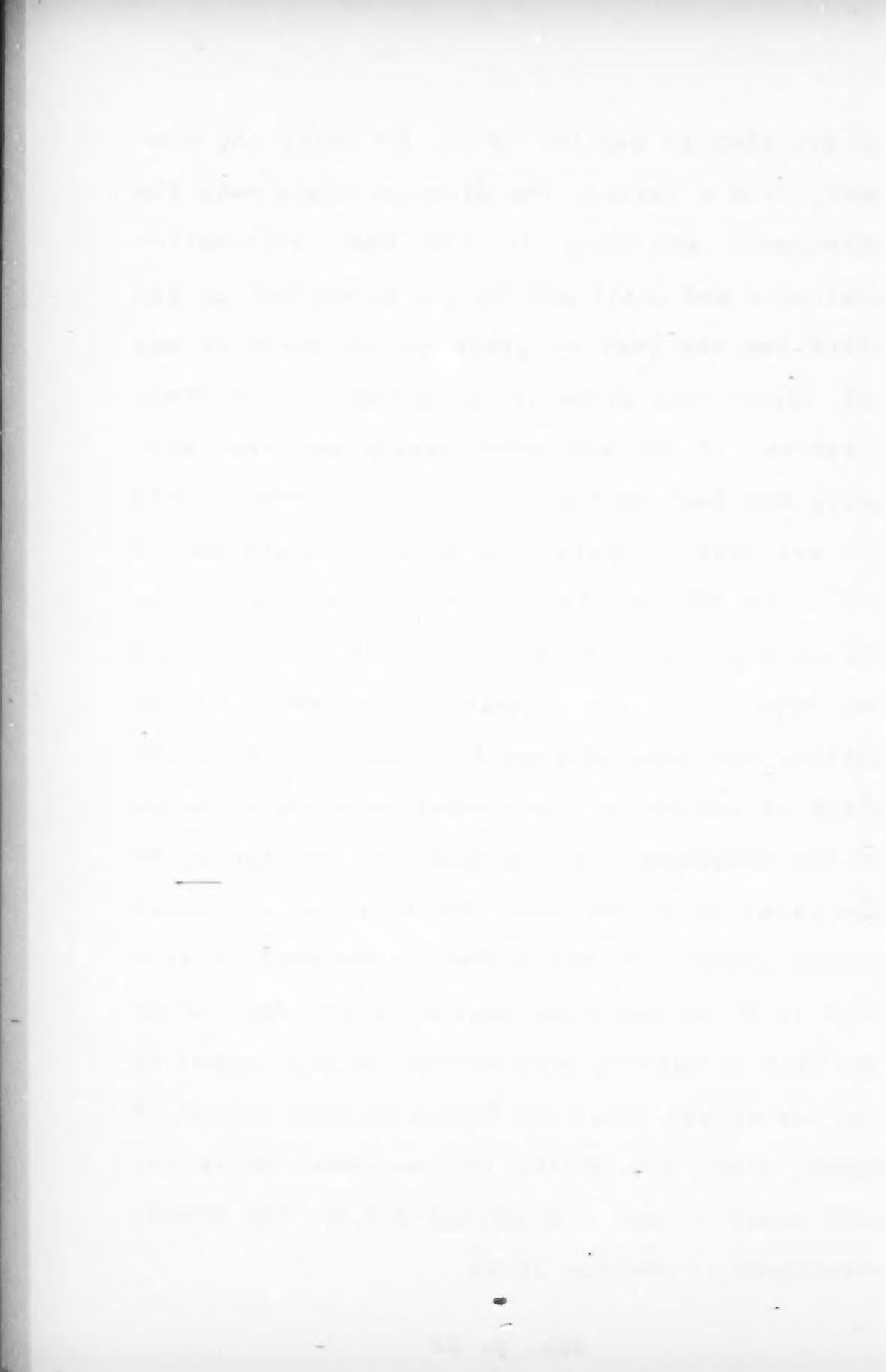
1971. The 1970-71 school year was the first year of the new program. The new program was designed to provide a more comprehensive and integrated approach to the education of the deaf. The new program included a variety of educational settings, including regular classrooms, special education classrooms, and residential schools. The new program also included a variety of educational services, including speech therapy, hearing aids, and sign language interpretation. The new program was a success, and it has since become the standard for the education of the deaf in the United States.

15, HRS on or before April 9 preceding the tax year, as provided in this chapter. Where such an appeal is based upon the ground that the assessed value of the real property for tax purposes is excessive, the valuation claimed by the taxpayer in the appeal shall be admissible in evidence, in any subsequent condemnation action involving the property, as an admission that the fair market value of the real property as of the date of assessment is no more than the value arrived at when the assessed value from which the taxpayer appealed is adjusted to one hundred percent fair market value; provided, that such evidence shall not in any way affect the right of the taxpayer to any severance damages to which he may be entitled. (1981, Ord. No. 613, sec. 95.)

HAWAII COUNTY CODE

Section 19-33. Assessment of unreturned or omitted property: review; penalty. If, when returns are required under this chapter, any person refuses or neglects to make such returns, or declines to authenticate the accuracy thereof

as provided in section 19-12, or omits any property from a return, the director shall make the assessment according to the best information available and shall add to the assessment or tax lists for the year or years during which it was not taxed, the property unreturned or omitted. Likewise, if for any other reason any real property has been omitted from the assessment lists for any year or years, the director shall add to the lists the omitted property. Notice of the action shall be given the owner, if known, within ten days after the assessment or addition, by mailing the same addressed to him at last known place of residence. Any owner desiring a review of the assessment or the addition may appeal to the panel by filing with the director a written notice thereof in the manner prescribed in section 19-97 at any time within thirty days after the date of mailing such notice, or may appeal to the tax appeal court by filing written notice of appeal with, and paying the necessary costs to, such court within the period and in the manner prescribed in section 19-98.



A penalty of ten percent shall be added by the director to the amount of any assessment made by him pursuant to this section, which penalty shall be imposed where the failure to assess or tax the property was not due to the refusal or neglect of the owner to return the property or authenticate the accuracy of his return.

For the purpose of determining the date of delinquency of taxes pursuant to assessments under this section, such taxes shall be deemed delinquent if not paid within thirty days after the date of mailing of notice of assessment, or if assessed for the current assessment year, within thirty days after the date of mailing the notice or on or before the next installment payment date, if any, for such taxes, whichever is later. (1981, Ord. No. 613, sec. 34).